

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

780

No. 2222.

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PHILADELPHIA, BALTIMORE AND WASHINGTON RAIL-  
ROAD COMPANY, APPELLANT,

vs.

THEODORE A. SCHUBERT.

---

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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FILED SEPTEMBER 15, 1910.





COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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INDEX.

Original.    Print

Caption.....	1	1
Declaration .....	1	1
Notice to plead .....	6	4
First plea.....	6	4
Joinder of issue.....	7	4
Memorandum : Leave to file additional plea granted.....	7	4
Second plea.....	7	5
Demurrer to second plea.....	21	12
Memorandum : Demurrer to second plea sustained.....	21	13
Memorandum : Verdict for plaintiff.....	22	13
Motion for a new trial.....	22	13
Memorandum : New trial granted unless plaintiff remits \$5,000 of verdict .....	23	13
Order to enter remittitur .....	23	14
Motion for a new trial overruled; judgment on verdict less remit- titur ordered; judgment; appeal.....	24	14
Memorandum : Appeal bond approved and filed.....	24	14
Bill of exceptions submitted.....	25	14

	Original.	Print
Bill of exceptions made part of record.....	25	15
Bill of exceptions.....	25	15
Testimony of Frank H. Bell.....	25	15
Herman J. Towney .....	28	16
Dyonisius J. Waters.....	31	18
Theodore A. Schubert.....	32	19
Edward M. Parker.....	40	22
W. P. Borland.....	42	24
Robert Farnham.....	47	26
Wm. F. Greene.....	50	27
E. B. Hunt.....	53	29
Application for membership in the relief fund.....	55	30
Regulations governing relief department.....	68	39
Exceptions to rulings of court.....	121	99
Plaintiff's prayers.....	123	100
Defendant's prayers.....	124	100
Charge to jury.....	125	101
Directions to clerk for preparation of transcript.....	129	103
Time to file transcript extended.....	130	103
Clerk's certificate.....	131	103



# In the Court of Appeals of the District of Columbia.

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No. 2222.

PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY,  
Appellant,

vs.

THEODORE A. SCHUBERT.

---

*a* Supreme Court of the District of Columbia.

At Law. No. 51468.

THEODORE A. SCHUBERT, Plaintiff,

vs.

PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY,  
a Corporation, Defendant.

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed March 8, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 51468.

THEODORE A. SCHUBERT, Plaintiff,

vs.

PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY,  
a Corporation, Defendant.

The plaintiff, Theodore A. Schubert, sues the defendant, the Philadelphia, Baltimore & Washington Railroad Company, a corporation, for that heretofore, to-wit, on the 13th day of May, 1908, and prior thereto, the defendant was as it still is a common carrier by railroad in the District of Columbia, and as such in the operation and move-

ment of its trains, engines and cars used, owned and operated certain yards, tracks and switches situate in the City of Washington, District of Columbia, among which were certain tracks designated as side tracks No. 7, No. 8 and No. 9, which said side tracks were situate in one of its yards in the southwestern portion of said City, at or near a point where 12th street crosses the tracks used by the defendant; which said side tracks were so connected with the main tracks used by the defendant, by means of switches, that trains, engines and cars could be "switched" or shifted back and forth and to and from said main tracks and said side tracks No. 7, No. 8 and No. 9; and on the day and year aforesaid the plaintiff was employed as a brakeman with one of the engines of the defendant known as No. 5109, which said engine was being used on the day and year aforesaid for the purpose of "switching" or shifting part of the train to which said engine was attached from the main track of the defendant to said track No. 7, it being necessary for any cars or train of cars in being shifted from the main track to said side track No. 7 to be run by and over the switches which connected said side tracks 8 and 9 with the said main track.

And the plaintiff avers that it then and there became and was the duty of the defendant, its agents and employees, to use due and proper care to cause no injury to the plaintiff while he was discharging his duties as brakeman as aforesaid, and to provide safe and proper switches and tracks, and to have said switches located in suitable and proper places, and to have the same properly equipped with all necessary and proper signals and appliances, so that the plaintiff while doing his work might be notified and warned as to the condition of the defendant's switches with respect to whether they were closed or opened; and to use due and proper care to cause its said switches to be properly set and adjusted so that no car or train of cars, upon which the plaintiff might be employed, would wrongfully be caused to run or pass through any of said switches into and upon any of said tracks which were blocked or occupied by any other cars or train of cars; and to use due and proper care not to issue any improper order or command to the plaintiff that would cause him

to be upon or about any car or train of cars that would be wrongfully run or caused to run through the wrong switch into and upon any of said side tracks which were blocked or occupied by any other cars or train of cars;

But in violation of its duties in the premises and in disregard of the rights and safety of the plaintiff, the defendant, its agents and employees, did negligently and carelessly fail to maintain and have its tracks and switches, particularly the switch which opened and closed said side track No. 8, in a safe and proper condition, and did negligently and carelessly fail to have said switch located in a suitable and proper place, and did negligently and carelessly fail to equip said switch with the necessary signal or signal lights to enable the plaintiff when upon a car or train of cars approaching said switch to determine whether the same was open or closed; and did negligently and carelessly cause said switch which opened and closed said side track No 8 to be located in an unsuitable and improper place, to-wit,



under the bridge by means of which Twelfth Street crosses over and above the defendant's yards and tracks, in which place, owing to said bridge and the shadow thrown thereby, the said switch which opened and closed said side track No. 8 is and was obscured and hidden from the view or vision of anyone approaching the same upon any moving car or train of cars; and while said side track No. 8 was occupied or blocked by other cars or train of cars did negligently cause said switch to be left open so that any car or train of cars being shifted from the said main track and intended for said side

4 track No. 7 would be wrongfully caused to be run into and upon said side track No. 8; and did negligently and carelessly, through its agent and employee the conductor in charge of the engine aforesaid, under whom the plaintiff was employed, and to whose orders he was subject, order and direct the plaintiff to ride upon four cars which were intended to be separated from the train aforesaid, and to be run or "kicked" into and upon said side track No. 7, in order that the plaintiff might be in a position to control and stop the said four cars by means of the brakes attached thereto at the proper position on said side track No. 7 after the said cars had passed or been kicked through the switch leading into said side track No. 7:

So that in consequence of the negligence and carelessness of the defendant, its agents and employees as aforesaid, while the plaintiff was carrying out the orders of said conductor, and riding upon the said four cars which had been separated from the train aforesaid and were being run or "kicked" from the main track of the defendant as aforesaid, the said four cars instead of running into and upon the said side track No. 7, where they were intended to be and should have been run, were negligently and wrongfully caused as aforesaid to run into and upon the said side track No. 8, where they were brought and came into violent collision with the cars or train of cars standing upon said side track No. 8 as aforesaid; as a result whereof and through the negligence and carelessness of the defendant, its agents and employees as aforesaid, and without any negligence or carelessness on his part, the plaintiff was thrown from the place where he was riding upon the said four cars as aforesaid, to

5 and upon the track of the defendant company, and before he could extricate and remove himself therefrom the said train from which the said four cars had been disconnected and "kicked" as aforesaid, and which train was at the time negligently being run backward and following too close to the said four cars at a decreased rate of speed, ran over the plaintiff and bruised, mangled and crushed him, and inflicted upon him many serious and permanent injuries; and thereby he received many cuts, bruises, contusions and lacerations about his head, arms and body, and had his right shoulder and arm crushed and mangled and had the muscles of said arm from the shoulder to the elbow-joint stripped and torn from his arm, whereby his arm was rendered permanently helpless and useless, and he was thereby otherwise greatly shocked and injured and had his nervous system so greatly injured that his power of both mind and body has been seriously and permanently impaired,

and he has been made sick, sore and lame and has so remained from the day and year aforesaid hitherto and always will so remain, and he has suffered and will continue to suffer great pain and anguish of body and mind, and he has been and still is and will continue to be during the balance of his life unable to perform any labor which requires the use of his right arm, and he has lost large sums of money which he would otherwise have earned and his earning capacity has been greatly and permanently impaired and reduced, and he has been compelled to pay out and expend large sums of money in endeavoring to be healed and cured of the injuries received as aforesaid; all to his great damage in the sum of Twenty-five Thousand (25,000) Dollars.

6       Wherefore, he brings this suit and claims damages in the sum of Twenty-five Thousand (25,000) Dollars besides costs.

LECKIE, FULTON & COX,  
O'FLAHERTY & FULTON,  
*Attorneys for Plaintiff.*

*Notice to Plead.*

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

LECKIE, FULTON & COX,  
O'FLAHERTY & FULTON,  
*Attorneys for Plaintiff.*

*First Plea.*

Filed March 29, 1909.

\*       \*       \*       \*       \*       \*       \*

Now comes the defendant and for plea to the declaration filed by the plaintiff in the above entitled cause says that it is not guilty as therein alleged.

McKENNEY & FLANNERY,  
*Attorneys for Defendant.*

7

*Joinder of Issue.*

Filed March 31, 1909.

\*       \*       \*       \*       \*       \*       \*

The plaintiff joins issue in the plea of the defendant filed in the above entitled cause.

LECKIE, FULTON & COX,  
*Attorneys for Plaintiff.*

*Memorandum.*

May 23, 1910.—Leave to five additional plea granted.



*Second Plea.*

Filed May 23, 1910.

\* \* \* \* \*

And now comes the defendant, the Philadelphia, Baltimore & Washington Railroad Company, by leave of the Court first had and obtained, and for a further and second plea to the declaration filed by the plaintiff in the above entitled cause and as a defense to this action, says:

That the said plaintiff, Theodore A. Schubert, before the institution of this suit and before the injuries alleged in his declaration to have been received by him on May 13, 1908, were so received, 8 applied for membership in and was received as a member of the Relief Fund of said defendant Railroad Company, and by and in his application for and contract of membership therein, which was dated on, to-wit, October 18th, A. D. 1905, and duly signed by him, and which is now shown to the Court as a part of this plea, among other things contracted, agreed and stipulated as follows:

Philadelphia, Baltimore & Washington Railroad Company.

Relief Department.

*Application for Membership in the Relief Fund.*

To the Superintendent of the Relief Department:

I, Theodore Albert Schubert of Washington, D. C., employed in the service of the Philadelphia, Baltimore & Washington Railroad Company, as Brakeman upon the Maryland Div. C. T. Department, do hereby by reason of such employment, apply for membership in the Relief Fund, and consent and agree to be bound by the Regulations of the Relief Department of the said Company, as contained in the book of said Regulations, approved by the Board of Directors, which I have read or have had read to me, and by any other regulations of the said Department hereafter adopted, and by the provisions of any agreement or agreements made by the said Company with any other corporation or corporations associating in administration of their respective Relief Departments, in accordance with said book of Regulations.

I also agree, That the said Company, by its proper agents, and in the manner provided in said Regulations, shall apply as 9 a voluntary contribution from any wages earned by me under said employment, or from benefits that may hereafter become payable to me, at the rate of two dollars and ten cents per month for the purpose of securing the benefits provided for in the Regulations for a member of the Relief Fund of the second class, <sup>a</sup> and additional death benefit equal to twice the death benefit of the first class. <sup>a</sup> Unless I shall otherwise designate in writing, with the ap-



proval of the Superintendent of the Relief Department, death benefit shall be payable to <sup>a</sup> my father Mannassas D. Schubert, Experiment, Amherst Co., Va.—And if any person now or hereafter designated by me to receive the death benefit shall not be living or shall be incapacitated for executing the requisite receipt and release, or if there shall be no such person, the death benefit shall be payable as provided in the Regulations of the Relief Department for such event. And I agree that the acceptance of benefits from the said Relief Fund for injury or death shall operate as a release of all claims for damages against said Company, arising from such injury or death, which could be made by or through me, and that I or my legal representatives will execute such further instrument as may be necessary formally to evidence such acquittance.

I also agree, that this application, when approved by the Superintendent of the Relief Department, shall make me a member of the Relief Fund on and from the date upon which by the provisions of the Regulations and the terms of this application, it  
10 takes effect, and shall constitute a contract between myself and the said Company, and that the terms of this application and the Regulations of said Department shall, during my membership, be a part of the conditions of my employment by the Company, and that the same shall not be avoided by any change in the character of my service, or locality where rendered, while in such employment, nor by any change in the amounts applicable from my wages to the Relief Fund, which I may hereafter consent to, and that the agreement that the above-named amounts shall be appropriated from my wages shall apply also to any other amounts arising from changes made as aforesaid and shall constitute an appropriation and assignment in advance, to the said Company in trust, for the purposes of the Relief Fund, of such portions of my wages, which assignment shall have precedence over any other assignment by me of my wages, or of any claim upon them on account of liabilities incurred by me.

I also agree, for myself, and those claiming through me, to be especially bound by Regulation numbered 65, providing for final and conclusive settlement of all disputes, by reference to the Superintendent of the Relief Department and an appeal from his decision to the Advisory Committee.

I certify, that I am correct and temperate in my habits; that so far as I am aware I have no injury or disease, constitutional or otherwise, which will tend to shorten my life, and am now in good health and able to earn a livelihood.

I also agree, That any untrue or fraudulent statement made by me to the Medical Examiner, or any concealment of facts  
11 in this application, or resignation from the service of the said Company or my being relieved from employment and pay therein at the pleasure of the Company or its proper officers, shall forfeit my membership in the aforesaid Relief Fund and all benefits, rights or equities arising therefrom, excepting that my leaving the service shall not (in the absence of any of the other

foregoing causes of forfeiture) deprive me of any benefits to the payment of which I shall have previously become entitled by reason of accident or sickness occurring while in the service.

This application to take effect the eighteenth day of October, A. D. 1905, if I shall be on duty on that date; otherwise upon the date of my going on duty thereafter.

In witness whereof, I have signed these presents at Washington, D. C., this twenty-sixth day of October, A. D. 1905.

THEODORE ALBERT SCHUBERT.

Father assenting.

Witness:

The following made before execution:

P. H. Steltz jr. witness to "Mannassas" in signature of father corrected.

P. H. STELTZ, JR.

R. D. BARRETT,

*Witness to*

MANNASSAS D. SCHUBERT.

The foregoing application is approved at the office of the Superintendent of the Relief Department at Philadelphia, in the county of Philadelphia, State of Pennsylvania, this eighteenth day of December, A. D. 1905.

No. 247018.

E. B. HUNT,

*Assistant Superintendent of the Relief Department.*

LW1.

a. If no additional death benefit is taken in this application, draw lines through the words "and additional death benefit" and all following, to and including the word "class" in the next line. If no beneficiary is specially designated draw lines through the blank space. These are not to be noted by the witness.

Record W Card T Statistics B Cert. issued 12/18/05 S. Dept. 688.  
D. M.

*Questions Answered by Applicant for Membership in Connection with Annexed Application.*

- |  |  |
|--|--|
| 1. What is your name in full, including all given names?   | 1. Theodore Albert Schubert.   |
| 2. When were you born?   | 2. Dec. 3rd 1884.  |
| 3. Where were you born?  | 3. Levy Co.—Florida.   |
| 4. Are your parents living? If so, give their names. If not living, give age at, and cause of death. | 4. Father. Mannassas D. Schubert. Mother. Deceased—38 years—Unknown. |
| 5. Are you married or have you been? If wife (or husband) living, give name.                         | 5. No.   |



6. Have you any children living? If so, give names and ages. If none, so state.
6. None.
- 13 7. What are the names of your brothers and sisters? (If married this question need not be answered.)
7. Pearl V. — no brothers deceased. Edith I. Turner — no sisters deceased.

8. Have you been furnished with a copy of the book of regulations of the Pennsylvania Railroad Voluntary Relief Department? Yes.

9. Can you read print? Yes.

10. Have you read those regulations? Yes.

11. Have you had those regulations read to you? No.

12. Have you had a sunstroke? No.

13. Are you subject to fits? No.

14. Have you a stricture? No.

15. Have you hemorrhoids? No.

16. Have you a rupture? No.

17. Have you had articular rheumatism? No.

18. Have you had smallpox? No.

19. Have you been vaccinated? Yes.

20. Have you any other disease or physical infirmity? No.

21. Is there any disease you are likely to have inherited? No.

22. Do you know of any reason why you should not be accepted? No.

23. Have you ever been employed by any of the Companies associated in the administration of the Relief Department? If so, give name of Company, character and dates of employment with each Company, including the present service since Oct. 18th 1905 as Brakeman upon the Maryland Div. C. T. Dept.

I have read or have had read to me the above questions and the answers, and do hereby certify that the answers are true to the best of my knowledge and belief.

Signature of Applicant.

THEODORE ALBERT SCHUBERT.

Witness:

The following made before execution:

In answer to Question 7 name "Pearl B" corrected.

P. H. STELTZ, JR., M. D.

Oct. 26th 1905.

14

*Medical Examiner's Certificate.*

- |                          |  |
|--------------------------|--|
| 24. Intelligence.        | 24. Average.                                 |
| 25. General development. | 25. Muscular.                                |
| 26. Height.              | 26. 5 feet 10 $\frac{1}{4}$ inches.          |
| 27. Weight.              | 27. 157 lbs.                                 |
| 28. Chest measure.       | 28. 36 in. (full insp.), 32 in., (full exp.) |
| 29. Abdominal measure.   | 29. 30 in.                                   |
| 30. Sex.                 | 30. Male.                                    |
| 31. Hair.                | 31. Brown.                                   |
| 32. Complexion.          | 32. Fair.                                    |
| 33. Eyes.                | 33. Blue.                                    |
| 34. Special senses.      | 34. Normal.                                  |

- |  |                                  |
|--|----------------------------------|
| 35. Head and face.   | 35. Normal.                      |
| 36. Abdomen and groins.                                    | 36. Normal.                      |
| 37. Spine and joints.                                      | 37. Normal.                      |
| 38. General surface.                                       | 38. Normal.                      |
| 39. Heart: <i>a.</i> Number and character of pulse beats.  | 39. <i>a.</i> 74—full & regular. |
| <i>b.</i> Where apex beats.                                | <i>b.</i> Normal.                |
| <i>c.</i> Auscultation.                                    | <i>c.</i> Normal.                |
| <i>d.</i> Blood-vessels.                                   | <i>d.</i> Normal.                |
| 40. Lungs: <i>a.</i> Number and character of respirations. | 40. <i>a.</i> 18—easy—abdominal. |
| <i>b.</i> Percussion.                                      | <i>b.</i> Resonant.              |
| <i>c.</i> Auscultation.                                    | <i>c.</i> Normal.                |
| <i>d.</i> Character of respiratory murmur.                 | <i>d.</i> Vesicular.             |
| 15     41. Kidneys and bladder.                            | 41. No evidence of disease.      |
| 42. Cachexiæ, eiatheses, temperate, &c.                    | 42. None, temperate.             |
| 43. Opinion as to applicant's statement after examination. | 43. Truthful.                    |
| 44. Opinion of applicant's chances for longevity.          | 44. Expectancy.                  |
| 45. Vaccinated when examined.                              | 45. No.                          |

I certify that the above questions were answered advisedly as stated therein, by the person named as applicant in the annexed application, that the description and facts relating to the applicant are as ascertained from him, that I have carefully examined him, that the above is a correct sketch of his existing condition, according to my best knowledge and belief, and I do hereby approve said applicant as physically qualified.

P. H. STELTZ, JR., *M. D.*,  
*Medical Examiner.*

Place and date of examination, Washington, D. C., Oct. 26th, 1905.

If applicant is not approved write "dis" before "approve" and "un" before "qualified." In other cases draw lines through the spaces.

The above certificate examined and applicant found physically qualified.

T. W. LATTA, *M. D.*,  
*Chief Medical Examiner.*

Philadelphia, Pa., Nov. 3, 1905.



16 The aforesaid application, as is shown upon its face, was duly approved by the proper officer of The Pennsylvania R. R. Voluntary Relief Department, said Department being an association in joint administration of the Relief Departments or Funds of the Pennsylvania Railroad Company, the Northern Central Railway Company, the defendant the Philadelphia, Baltimore & Washington Railroad Company, and the West Jersey & Seashore Railroad Company, under proper authorizations of the several Boards of Directors of said Railroad Companies, and a certificate of membership in the Relief Fund of the defendant the Philadelphia, Baltimore & Washington Railroad Company, being No. 247018, dated October 18th, 1905, was duly issued to and accepted by said Theodore A. Schubert, said certificate being in the words and figures following, to-wit:

“The Pennsylvania Railroad Voluntary Relief Department.

Certificate of Membership in the Relief Fund.

No. 247018.

OFFICE OF THE SUPERINTENDENT,  
PHILADELPHIA, PA., *Oct. 18, 1905.*

This certifies that Theodore A. Schubert employed by The Philadelphia, Baltimore & Washington Railroad Company is a member of the Relief Fund of that Company, and is entitled to the Benefits provided by the Regulations of the Relief Department for a member of the second class, with two additional Death Benefits of the first class.

E. B. HUNT,  
*Assistant Superintendent of  
the Relief Department.*

17 Said certificate and the regulations then in force, which had been duly adopted by said Relief Department and which are referred to and form a part of said certificate, and said application for and contract of membership, are now shown to the Court as a part of this plea.

By virtue of said application and contract, said certificate of membership and said regulations forming a part thereof, the plaintiff became a member of the Relief Fund of the defendant company of the second class entitled to two additional death benefits and made a monthly contribution to said Fund of \$2.10 from said 18th day of October, 1905 to May 13, 1908, the date of the accident set forth in his declaration. As a member of said Relief Fund of the second class said plaintiff was entitled to receive disablement benefits for each day, including Sundays and holidays, as follows: In the event of accident, for the first 52 weeks, at the rate of \$1.00 per day; after 52 weeks, at the rate of .50 per day; in case of sickness, after the first three days and not longer than 52 weeks, .80 per day, and after 52 weeks, .40 per day. And in addition to said disablement benefits his beneficiary, in the event of the plaintiff's death, would



have been entitled to receive \$500.00 and \$250.00 for each of the two additional death benefits, or, in all, \$1,000.00. The plaintiff's membership in and payment to the Relief Fund also entitled him to participation in the Pension or Superannuation Fund of said defendant Company, from which Fund allowances are paid to members retired from the service based on length of membership and class held therein by the member as fully set forth in the  
18 aforesaid Regulations, and in addition to this the plaintiff was entitled to surgical attendance and hospital service free of charge when disabled by accident in the service of the Company, and to an artificial limb or other appliance made necessary by accident in such service.

The Relief Fund from which said benefits are and were to be paid was formed by *voluntary* contributions from the employees of the defendant Company and the other Companies above named, jointly associated in its management, appropriations whenever necessary to make up any deficit by said Company, the income or profit derived from investments of the moneys of the Fund and such gifts or legacies as might be made to the said Companies for the use of the Fund. Said Companies, including this defendant, took general charge of the Department, guaranteed the fulfilment of its obligations in conformity with regulations from time to time established, took charge of its funds, became responsible for their safe keeping, supplied the necessary facilities for conducting the business of the Relief Department, and paid all the operating expenses thereof.

On December 31, 1908, the total number of employees of the defendant the Philadelphia, Baltimore & Washington Railroad Company was 8458, of which but 6909 were members of the Relief Fund, and during said year 1908, in which plaintiff sustained his injuries, said Railroad Company contributed, as the cost of administering its Relief Fund, the sum of \$21,557.02, and during the time the plaintiff was a member of said Fund its total contribution for  
19 such administration was \$57,610.51. In addition to the foregoing, said Company furnished for the use of the Relief Department the facilities of its mail, express and telegraph departments free of charge.

Under Section 58 of the aforesaid Regulations it was provided as follows:

"Should a member or his legal representative make claim, or bring suit, against the Company, or against any other corporation which may be at the time associated therewith in administration of the Relief Departments, in accordance with the terms set forth in Regulation No. 6, for damages on account of injury or death of such member, payment of benefits from the Relief Fund on account of the same, shall not be made, until such claim shall be withdrawn or suit discontinued. Any compromise of such claim or suit, or judgment in such suit, shall preclude any claim upon the Relief Fund for benefits on account of such injury or death, and the acceptance of benefits from the Relief Fund by a member or his beneficiary or beneficiaries, on account of injury or death, shall operate as a release and satisfaction of all claims against the Company and

any and all of the corporations associated therewith in the administration of their Relief Departments, for damages arising from such injury or death."

That after the plaintiff received the injuries alleged and set forth in the declaration in this case and when, under his said application and contract of membership in the Relief Fund and the Regulations forming a part thereof, he had the right and privilege  
20 to elect between the acceptance of the benefits provided for by and under his said application and contract and said regulations and the bringing of a suit against the defendant Company for damages for said injuries, he, the plaintiff, voluntarily, freely and without any solicitation or compulsion on the part of the defendant, accepted the benefits payable to him under his said application and contract of membership and said regulations and duly receipted in writing therefor as follows:

On June 12, 1908, \$18.00 for benefits for 18 days from May 14-31, 1908, inclusive; on July 10, 1908, \$30.00 for benefits for 30 days from June 1-30, 1908, inclusive; on August 7, 1908, \$31.00 for benefits for 31 days from July 1-31, 1908, inclusive.

That after said payments were made the plaintiff having presented a claim to and made a demand upon the defendant for damages for the injuries alleged to have been sustained by him in said accident, no further payments were made to him from said Relief Fund as provided in Section 58 aforesaid.

And this defendant says that said payments of benefits so made to said plaintiff and voluntarily accepted and received by him subsequent to the date of his alleged injury and prior to the institution of this suit under his aforesaid application and contract of membership in said Fund and the regulations forming part thereof, operated as a release of all claims for damages against this defendant arising from the injury which the plaintiff claims to have sustained, and the defendant says that by reason thereof the plaintiff herein is barred from recovering any sum whatsoever in this action  
21 against the defendant and that the defendant has been fully discharged and released from all the claims and demands set forth in the declaration in this cause.

McKENNEY & FLANNERY,  
*Attorneys for the Defendant.*

*Demurrer to Second Plea.*

Filed May 23, 1910.

\* \* \* \* \*

The plaintiff demurs to the second plea of the defendant filed in the above entitled cause, and says that the said plea is bad in substance.

LECKIE, FULTON & COX,  
M. J. FULTON,  
*Attorneys for Plaintiff.*



*Note.*

One of the matters of law intended to be argued at the hearing is that under the provisions of law enacted by the Congress of the United States known as the Employers' Liability Law, as amended, the facts alleged in such plea constitute no defense to the plaintiff's cause of action.

*Memoranda.*

22      May 24, 1910.—Demurrer to Second Plea sustained.  
        May 25, 1910.—Verdict for Plaintiff for \$12,500.00.

*Motion for a New Trial.*

Filed May 26, 1910.

\*           \*           \*           \*           \*           \*           \*

And now comes the defendant and moves the Court to set aside the verdict rendered by the jury in the above entitled cause on May 25, 1910, and to grant a new trial, and for reasons therefor assigns the following, to wit:

1. Because of errors of law committed by the Court in the trial of said cause.
2. Because the damages awarded by the jury are excessive.
3. Because the verdict was the result of prejudice existing in the minds of the jury.
4. Because said verdict is contrary to law and to the instructions of the court.

McKENNEY & FLANNERY,  
*Attorneys for Defendant.*

MAY 26, 1910.

Messrs. Leckie, Fulton & Cox, Attorneys for Plaintiff:

23      Please take notice that we shall call the foregoing motion for a new trial to the attention of Chief Justice Clabaugh, holding Circuit Court No. 2, on Friday, June third, at the opening of Court on that day, or as soon thereafter as counsel can be heard.

McKENNEY & FLANNERY,  
*Attorneys for Defendant.*

*Memorandum.*

June 3, 1910.—New trial granted unless plaintiff remits \$5,000.00 of verdict in 15 days.

*Order to Enter Remittitur.*

Filed June 11, 1910.

\* \* \* \* \*

The Clerk of the Court will please enter upon the docket a remittitur of \$5000.00 from the verdict of the jury in favor of the plaintiff, rendered in the above entitled cause.

LECKIE, FULTON & COX,  
O'FLAHERTY & FULTON,  
*Attorneys for Plaintiff.*

24 Supreme Court of the District of Columbia.

MONDAY, June 13th, 1910.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

\* \* \* \* \*

It appearing that the plaintiff herein has by his attorneys of record filed a remittitur of Five Thousand Dollars of the verdict of Twelve Thousand Five Hundred Dollars rendered herein it is ordered that the motion for a new trial filed herein be, and the same is hereby overruled and judgment on verdict less the said remittitur is ordered. Wherefore, it is considered that the plaintiff herein recover of defendant herein, the sum of Seven Thousand Five Hundred Dollars (\$7500.00) with interest thereon from this date, together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment, the defendant by its attorney, in open court, notes an appeal to the Court of Appeals of the District of Columbia; whereupon, the penalty of a bond to operate as a supersedeas is hereby fixed in the sum of Ten Thousand Dollars.

*Memoranda.*

25 June 23, 1910.—Appeal bond approved and filed.  
July 11, 1910.—Bill of exceptions submitted.

Supreme Court of the District of Columbia.

WEDNESDAY, July 13th, 1910.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice, presiding.

\* \* \* \* \*

The Court having this day signed the Bill of Exceptions heretofore, submitted herein, now orders the same of record as of the time of the noting thereof at the trial.



*Bill of Exceptions.*

Filed July 13, 1910.

\* \* \* \* \*

Be it remembered that the above entitled cause came on for trial before Chief Justice Clabaugh and a jury on May 24, 1910; Messrs. M. J. Fulton and Joseph W. Cox appearing on behalf of plaintiff and Mr. J. S. Flannery representing the defendant.

And thereupon the plaintiff to maintain the issues upon his part joined gave evidence by the witnesses hereinafter named tending to prove as follows:

26 FRANK H. BELL, a witness called by and on behalf of the plaintiff, testified that on May 13, 1908, he was employed by the defendant, the Philadelphia, Baltimore and Washington Railroad Company, as engineer of engine 5109, the engine of the train upon which the plaintiff was at the time he was injured; that Lusby was the conductor of this train, Towney was flagman, Waters was front brakeman; the plaintiff Schubert was rear brakeman, and Crandall fireman; that as nearly as he could recollect, the accident occurred between eleven and twelve o'clock at night; that they were engaged in a shifting operation in the railroad yard near 12th Street; that the conductor gave them a signal to pull 15 or 18 cars off of No. 9 track through what is called the "ladder" track, with which all the yard sidetracks connect, onto the main track; the conductor then gave a "stop" signal, and then gave a signal to "kick" or back the cars back towards switches 8 and 9; that he then got a shut-off or stop signal from one of the men on the ground 15 or 16 car lengths away, and about the time he received this latter signal he collided with the cars on the opposite end; that he then received a signal to go ahead and back up into No. 9 switch; that when he reached No. 9 switch he heard that Schubert was hurt, saw that a cut on his arm was bleeding, grabbed a white flag, tore it up and bound it around his arm close to the shoulder, after which Schubert was taken to South Capitol Street.

Said witness further testified on direct examination that that night his train consisted of 15 or 16 cars; that if they had intended to cut off four cars from the rear and put them in sidetracks No. 7 or No. 5, it would have been necessary to pass by switches leading into sidetracks No. 9 and No. 8, and these switches should have been closed for the movement; that the cars of his train ran into switch No. 8; that he did not know at that time whether this switch had any cars on it or not, that this was not his business; that all of the switches there had targets on them, with the exception of No. 8; that a target is a switch light signifying the position of the switch; that when it shows white it indicates that the switch is set for a straight track and when it shows green in the yard it signifies that the switch is set to turn off of the ladder track into the yard track; green and white are used in the yard and red and white light upon the main line switches; that a green light in the yard



means that the switch is open; that No. 8 switch is the only one directly under the 12th Street overhead bridge, indicated on the photographs; that No. 9 is north of the bridge and No. 7 south of the bridge; that from his position on the engine, there being no target at No. 8 switch, it was impossible to tell whether it was open or shut, and that no one else, if he was on the cars, could tell whether it was open or closed.

On cross-examination said witness testified that the men on the ground could tell, if they got close enough to the switch; that this yard was opened quite a while before the accident happened; that the witness had run a yard engine in that neighborhood, in and out of that yard, for about two years; that he was running an extra engine on the road, and also a yard engine occasionally in the yard; that he could not tell exactly how much of the time plaintiff  
28 Schubert was a member of his crew; that sometimes he would be in the crew and sometimes not; that he did not know why it was No. 8 switch did not have a target like the other switches, but that during all the time he was there after these yards were put into commission No. 8 track had no target on it.

HERMAN J. TOWNEY, a witness called by and on behalf of the plaintiff, testified that he was a brakeman in the employ of the defendant company and was a member of the crew of the train on which the plaintiff was hurt, May 13, 1908; the other brakemen were Schubert and Waters; that they were engaged in shifting cars in the yard; that he threw the switch to let the train out of No. 9 siding and after the train had passed the switch he threw it back; that he then gave the "back" signal to the engineer, because they were going to put four cars in switch No. 5; that at this time Schubert was on a Seaboard Air Line box car in the train, one of the cars which they were going to put in No. 5 switch; that he was up there to uncouple the cars; that Schubert got out of the car and was cutting the four cars off that were to go into No. 5 switch; that to reach this switch the train had to pass switch No. 8 and No. 9; that switch No. 8 ought to have been closed for the train to pass, but it was not closed, and as the result of it being open the cars went into No. 8; that at that time there were some cars on No. 8 switch between 3 and 4 car lengths from the mouth of the switch, and when the four cars entered that switch they ran against them; that as a result of this collision Schubert was  
hurt; that when the witness first saw him after the accident

29 Schubert was standing up against a car, and when they found he was injured he was taken to the hospital; that no particular one was attending to opening and shutting the switches; that he had closed switch No. 9 and some one else was going to open switch No. 5, but that he (witness) did not close switch No. 8; that he was back at the switches and Schubert was on the train; that he had to be on the cars to cut them; that when the witness gave the signal to the engineer to come back it was an indication to the engineer that the road was ready for him to switch the cars; that in obedience to that signal the cars were backed and run into



No. 8 switch, because that switch was open, when it ought to have been closed; that down in the yard they work under the conductor's orders, and that Conductor Lusby had given an order to put these cars into switch No. 5.

On cross examination said witness testified that he had been a brakeman down there for about seven years and had worked in these yards ever since he went there; that the plaintiff Schubert had worked with him as a member of the yard crew quite often at night, and he also thought he had worked a little with him in the day time; that he had worked with the witness as a brakeman at night after the new yards were put into commission; that during all the time the witness had been working in the 12th Street yard after the improvements were finished and this bridge was built, there was no target on switch No. 8, that there were targets on the other switches; that in order to tell when switch No. 8 was open or closed it was customary for them all to ride on the end of the car and cast their eyes down on the switch when they passed  
30 it; that is the way they generally told; that when they were on the ground they could tell in the same way, by looking at it; that you could see it at some distance and did not have to go right up to it, because the reflection from the other switch lights would throw some light there; that it was not the duty of any particular one to see that the switches were closed before the movement was made—whichever one comes to them throws them—of course, the oldest man as a general thing attends to the switches; that there is no rule to that effect, but it is the duty of every man to close and protect the switches before the movement is made, and the witness understood that to be his duty that night; that as he passed No. 8 he did not notice how it was set; that that was the only switch they had to go up to to see whether it was open or closed; it required no orders from the conductor for them to notice the switch points.

Said witness further testified that you could not use a target at the point of No. 8 switch—"It is dangerous—it ain't safe—the men couldn't work there with a target on that side—the track is too close;" that this switch is very near the end of the bridge abutment.

On re-direct examination said witness testified that Schubert was on the cars cutting them loose, the other brakeman was at 8th Street, flagging to protect trains coming from the opposite direction; that the accident occurred between eleven and twelve o'clock at night; that the night was dark; that looking down at the switches from No. 9 switch witness could see the condition of all the switches except No. 8, but No. 8 having no signal you could not tell  
31 whether it was open or closed; that if Schubert was on the car, cutting them off he would have his feet in the stirrup and one hand holding onto the grab-iron and the other lifting the cut-off lever.

DYONISIUS J. WATERS, a witness called by and on behalf of the plaintiff, testified that he was a brakeman in the employ of the defendant company and was a member of the crew of the train to which the plaintiff Schubert belonged at the time he was injured; that as brakeman of the train he was subject to the orders of the conductor, and on the occasion of the accident was flagging down at 8th Street; that the movements of the train by the engineer are governed by signals given to him by any member of the train crew; that before giving such signal a man is supposed to know the move that is going to be made and must know that the switches are set to carry out the intended movement; that this is the duty of the man who gives the signal; that the witness was protecting trains on the main line while the shifting movements were going on in the yard; that the "ladder" track, into which the switches lead, runs almost parallel with the main tracks of the road; that there are nine of these side tracks, all running into the "ladder track"; that No. 9 is the longest, and they gradually get shorter all the way down to No. 1; that they tell whether the switches are open or closed by the target on the switches, which is a sort of lantern with a light in it; when the switch is closed, the target is supposed to show white, and when it is open in the yard, the target is supposed to show green; that No. 8 track had no target upon it, all the other switches did have; that this No. 8  
32 switch is under the 12th Street bridge.

On cross examination said witness testified that he had been in the service of the defendant company for over six years; that he believes the 12th Street yards were put into service in the summer of 1907; that on the night of the accident the plaintiff Schubert was a member of the yard crew but was only an "extra"; that between the summer or fall of 1907, when the new yards were put into commission, Schubert had been on the crew with him, but witness did not think he was a regular man on the crew; that the witness was mostly on duty at night at that time; that No. 8 switch had no target during all the time that this yard had been used before the accident happened; that if a switch target had been placed at the point of No. 8 switch, under the 12th Street bridge, "it would be liable to injure a person cutting off cars."

On re-direct examination said witness testified that he only had a day job for a short while in the summer and could not say whether Schubert was on that crew with him in the day time or not; that witness was working at that time as a regular member of the yard crew; and Schubert was working as an extra man for that night, just on for that night; that he (witness) thought the yards were opened in the summer of 1907, because it was about the time the Union Station was opened up, but he is not sure of the exact date; that the point of No. 8 switch must be 12 or 14 feet from the end of the western pier or abutment of the 12th Street bridge.



33 THEODORE ALBERT SCHUBERT, the plaintiff, in his own behalf testified that he was employed as an extra brakeman by the defendant company in 1908, and at the time he received his injury was a member of the crew of shifting engine 5109; that this crew was composed of Conductor Lusby, flagman Towney, front brakeman Waters, and himself; that they had been waiting for a crew under Conductor Smallwood to back some cars off of track No 8; that they were on track No. 9, and after Smallwood's crew pulled out of their way, they pulled out and plaintiff was riding on the rear of the train, and as they passed between switch No. 5 and 6, his conductor, Lusby, was standing there and he "hollered" to him to "cut off and look out for four cars in No. 7 track," which meant that the plaintiff was to make the cut and at the same time look out for the cars that he did cut, or in other words, ride them in and see that they did not hit too hard, or if they did not go in clear, to hold them, so that they would not run out, or simply to attend to the cars until they were in place; that by "making the cut" he meant the uncoupling or separation of the cars from the rest of the train; that as they had to pass under the bridge so near the abutment, it was not safe for him to walk on the ground, and at the speed the cars were going he could not walk on the ground and keep up with them, so he had to ride on the cars; that he put his feet into the only position that he could at the time, that is, into the stirrup on the side of the car, held on to the handiron with one hand and lifted the cut-lever with his other hand to separate the cars; that as soon as his train pulled out clear of No. 9 switch, it halted and he jumped down

34 and took a position on the end of the fourth car between the fourth and fifth car- from the rear end, prepared to cut off and to look out for these four cars; that he had one hand on the handiron and his other hand on the cut-lever as the train commenced to move backward; that the train gained speed and by the time it was near the bridge it had attained something like 8 miles an hour; there were something like 15 cars in all and a good large engine; suddenly he noticed that the cars seemed to be rather separating a little bit, and just about that time the four cars that he had cut loose hit; they had separated about half a car length from the train; at that time he was in the same position he had been in when he cut the cars off; that he kept that position owing to the fact that there is danger often that the cars may couple up again upon being overtaken by the cars connected with the engine; when the cars hit the others, the plaintiff bounded up against the car, fell backward onto the track and before he could free himself or get up off the track the other cars of the oncoming train that were connected with the engine caught him at the point of his shoulder, simply following the bone clear out to the elbow and beyond, and mashing all those muscles out, leaving scarcely anything except the bone; that when he got the order from the conductor to cut off the four cars he knew where the conductor was, but he did not pay any attention to whether anybody else was out there or not; that he knew it would be somebody else's duty to throw the switches for the movement of these cars if they were there, and that he was only one member of the crew and that there were two



35 others supposed to be in the yard at the time; that if there had not been anybody else, he would have had to do it, and that if the conductor had wanted him (plaintiff) in particular to throw the switches, he would have ordered him to do it, but under the orders that he got it was not his duty to look out for the switches at all; that he could not handily have looked out for the switches and occupied the position he did on the end of the fourth car in order to uncouple the cars; that if the man who attends to the switches does not signal the train for the movement, he tells someone else right near him to do it; that the plaintiff did not know who gave the signal; that from where he was on the cars he could have seen the signal but he did not notice in particular because it was his move to go on the cars; that the only change he made in his position after the backward movement commenced and he had gotten on the end of the fourth car was to swing in a little as he reached a point near the end of the abutment of the bridge, where he had noticed a little earlier in the evening a ladder or some other article leaning up against the end of the pier or abutment, projecting towards the track; that he did this because he supposed the ladder was still there and he did not know whether he could clear it or not; that the cars he was riding went into sidetrack No. 8 and hit the cars that had been put in there a few minutes previously by Conductor Smallwood; that he went to work that night about six o'clock first going to the Water Street yards, which are across from the 14th Street yards; that he worked there until between 9 and 10 o'clock, then crossed over to the 14th Street yards; that he was injured about 11.20 and had been working in the 14th Street yards from between  
36 9 and 10 until 11.20; that he was extra brakeman on that crew that night.

Said witness further testified on direct examination that on the morning of the trial he had made certain measurements of the distances of the tracks and switches, etc., and that the conditions then existing were the same as they were at the time of the accident; that these measurements showed that the ladder track at the point of No. 8 switch was 5 feet 4 inches from the abutment or pier of the bridge, which is shown in photograph; that from the ladder track to the target of No. 7 and No. 6 switches is 3 feet 6 inches; that from the point of No. 8 switch to the south end of the abutment is 8 feet; from the south end of the abutment to No. 7 switch is 75 feet; from No. 7 switch to No. 6 switch 68 feet; from No. 8 switch to No. 9 switch, from point to point, 65 feet 6 inches; from the point of No. 8 switch to the point of No. 7 switch is 93 feet.

Said witness further testified on direct examination that at the time he was injured his compensation was 29 cents an hour of \$3.19 a night of 11 hours, and that he averaged 11 hours a day; that he did not remember how many days in the month he worked, but he could have worked every day if they had given him work; that his earning capacity would have been 90 to 95 dollars and his average earnings were about 60 or 65 dollars a month; that at the time of his injury he had been working for the defendant company about two years and eight months; that he had been away part of this



time and had gotten back about six days before the injury, after an absence of 45 days; that prior to the accident his health had been very good, but since his injury he had not been able to do  
37 anything scarcely until the first of the present year, except knocking around on the farm with his father; that owing to his arm he could do no manual labor whatever with his right hand; that he was decidedly right handed; that in addition to having his arm badly torn up, he had three cuts on his head; that the injury to his arm extended from the point of the shoulder down to the forearm. (And thereupon the witness exhibited his injured arm to the jury.)

Said witness further testified on direct examination that after he was injured he was carried to South Capitol Street on an engine, and from there to the Providence Hospital, where he was attended by Dr. Edward Mason Parker, and where he remained three months lacking four days; that it was nearly two months after that before his arm healed up, that as a result of the injury he had considerable pain,—terrible pain after the accident until after the operation was over, and was very sick for about two weeks; that after that he had pain which was not quite as severe as the other pain; that he still had pain in damp weather and in cold weather; and his arm would get cold a great deal quicker than any other part of his body; that he had to wear extra sleeves, etc., on it; that at night he would be wakened by rolling on that side; that it was easy to get the circulation impaired and that gave him pain and he had to turn over before he could get any relief.

On cross examination the plaintiff testified that he operated the camera and took the photographs which had been produced  
38 at the trial; that he entered the service of the defendant company October 18, 1905. And thereupon the plaintiff identified his signatures to the papers marked for identification HLB No. 1, HLB No. 1a, HLB No. 1b and HLB No. 1c, and also produced his original certificate of membership in the relief fund of the defendant company, No. 247,018, and his book of regulations forming a part thereof, which certificate and book were marked for identification HLB No. 2.

The plaintiff further testified on cross-examination that between October 1905, when he entered the service of the Company, and the date of the accident in controversy, he was occasionally absent from duty by reason of slight accidents and injuries; that he was off at one time nine days for injuries, and that when he was off for a longer period than three days he received certain payments under the papers identified by him; that when off for a period less than three days he would not get anything; that he began as an extra brakeman and was then promoted to flagman; that his duties called him all over the road from Wilmington to the Potomac Yards on the south side of the Potomac River; that he received his injuries in what was called the 14th Street yard; that it was all one railroad yard from 12th Street up to and including 14th Street; that he could not say when this yard was opened, but it was some time prior to the accident; that he could not recall any particular time when

he was in that yard prior to the accident, although he may have been; that in November 1907 his diary shows that he worked 15 days in various yards around Washington, in December 8 days, in January 1908, 9 days, in February 6 days, in March 4 days, and he was off duty until May 6th, working one day previous to the time he was injured in May; that his record showed that he worked two days in December on the same engine, but that he could not say whether they had any special work in the 14th Street yard or not; that he has no note of how often in 1908 he worked in the 12th and 14th Street yards; that occasionally in the switching operations they would have occasion to pass from one yard to the other.

The plaintiff further testified on cross examination that the ladder track begins at 14th Street and ends at 11th, and that all movements in the yard which involve the placing of cars in position on any of the sidings between 11th and 14th Streets have to be made from the ladder track; that prior to his accident on May 13th he may have known that No. 8 switch had no switch target, but he did not remember knowing it; that it was not his duty as extra brakeman to know all about the location of switches and switch targets; it was his duty to obey the conductor; but that he knew when the conductor ordered a movement to be made what to do with the switches; and this makes it necessary for the brakeman operating trains in the yard to throw at various times the switch levers and to observe the switch targets at the points of the switches; that it was the duty of the man upon the ground or the man that gave the signals to attend to the switches and see that they were right; that the conductor gives the orders for the movement and helps generally with any movement that he wants made.

On re-direct examination plaintiff testified that the switches have targets on them generally; that some of the switches in the defendant's yards had targets and some had not; that his record shows that he worked twice with the same conductor, but does not show definitely that he worked in the 12th and 14th Street yard prior to the accident; that he could not say whether he had or had not—that he might have or might not have worked there.

EDWARD M. PARKER, a witness called by and on behalf of the plaintiff, testified that he had been a resident physician in Washington since 1894 and had made a specialty of surgery since 1891 or 1892, when he went to the Johns Hopkins Hospital; that he was surgeon at the Emergency Hospital for two years, and for the past two years had been visiting surgeon at the Providence Hospital; that he was called to that hospital in May, 1908, between 12 and 1 o'clock at night to attend the plaintiff and found him with two breaks in the skin on the lower part of his arm, one at the point of the elbow and one at the outer side of the elbow; from the one at the end of the elbow was a large mass of muscle protruding and from the wound in the skin there was another large mass of muscular tissue protruding; the skin above that point was just like a loose bag, there being nothing under it except the bone; that a large piece of



muscle was thrust under the skin of the forearm and was lying there loose and entirely detached; that the wounds in the skin were not made from the wheel itself but simply the pressure of the wheel forcing the muscle down through the skin; he had some scalp wounds, but the principal injuries were about the arm and shoulder; the whole muscle on the back of the arm, the triceps muscle, was torn out, so that there was no blood supply left and no  
41 nerve supply, and it had to be cut away; the biceps muscle on the front of the arm was likewise torn from its attachment, but there was a little stump of it below which had vitality, but all the rest of it was crushed and filled with cinders and dirt; that had to be cut away, leaving only a small stump of the biceps muscle; the skin of the arm was laid wide open and this little biceps muscle had to be held in place by a stitch three or four inches long; there was only a small stump of the biceps muscle left and none of the triceps at all; it was attached simply at the elbow by the tendon and had to be cut because it had no blood or nerve supply and was of no possible use; the bone was not broken and the blood vessels and principal nerves were uninjured, so that he had a perfectly good pulse and could move his fingers and turn his hand, and the sensation of the skin of his hand and forearm was not affected; the injury simply consisted in forcing out, squeezing out, practically all the muscle of the upper arm; the two or three cuts on the scalp were not of any serious importance; the plaintiff remained in the hospital until some time early in August, and the essential part of the treatment was the operation performed early in August; the plaintiff's condition was rather critical for several days as a result of a shock from the injury, but he gradually improved; that he last saw the plaintiff the night before the trial and that the effect of the injuries described upon plaintiff's present condition is simply the loss of muscular power; the entire triceps muscle, the big muscle at the back of the arm, that is, the muscle with which a  
42 man lifts himself on a parallel bar, being gone; he has some power to extend the arm and has the use of the muscles which extend the arm but has lost the additional muscular power of the triceps muscle; the biceps muscle is there, but there is only a little stump at the bottom that is working; he cannot lift a great weight with the arm because four-fifths of the muscle is destroyed; the size of the arm is very small, the arm at one point being hardly thicker than the bone and nerves with the skin around it; the elbow joint is all right but there is a little limitation of motion in the extension of the arm; the loss of the muscle and loss of muscular power is permanent; the major part of the muscular force of the arm, both extension and flexion, is gone; he will lack the muscular power he had before, because the muscle has been taken away; such a wound was necessarily painful and he suffered from nervous shock; there cannot be an injury like that without some suffering, but he did not suffer in any exaggerated degree; there is not ordinarily such a great amount of pain from such a wound; after an operation of that kind, or any operation, there is some smarting pain for several hours, but that is about all, and it is rather the suffer-



ing from the nervous shock; the circulation appears to be perfect now; the circulation in the forearm is unimpaired entirely; there was only temporary nervous shock, and the witness thinks there is no permanent effect on the nervous system.

WILFRED P. BORLAND, a witness called by and on behalf of the plaintiff, testified that he was Secretary of the Block Signal and Train Control Board of the Interstate Commerce Commission, and that before he went with the Commission he had been employed in different departments of train service on railroads for a little over 20 years and had been with the Commission for 7 years; that he had been employed on different railroads in the capacity of conductor, trainman, engineer and fireman, in all sorts of train work during the time mentioned; that the board of which he is secretary was created and organized to carry out a resolution of Congress directing the Interstate Commerce Commission to investigate, test and report on safety appliances, which includes block signals, targets, switches, etc.; that he has no close familiarity with the 12th or 14th Street yards of the defendant railroad company, but the day before the trial looked at the location of the switches from the bridge; that this was all the information he had as to the location and lay-out of the tracks.

And thereupon counsel for the plaintiff propounded to the witness the following question:

“Q. It is in evidence that the ladder track to what is known as the pier is five feet four inches from the point of switch No. 8. Were those switches pointed out to you—No. 8, No. 7 and No. 9?  
A. Yes, sir.

“Q. It is also in evidence that from the ladder track to the target on switch No. 7 and switch No. 6 it is three feet six inches; and that it is five feet four inches from the point of switch No. 8 of the ladder track to the nearest abutment or pier. I will ask you to tell the jury, if you are able to state from the examination you made and from your experience as a railroad man, whether or not a target could have been properly erected at switch No. 8? It is in evidence that no target is there, or was there.”

And thereupon the defendant by its counsel interposed and objected to said question being asked, on the ground that said witness was not qualified to testify upon said subject, having made but one observation in the daytime from the bridge and knowing nothing of the requirements of the Acts of Congress or the necessities of the defendant's business, or the lay-out of the tracks and switches in the yards, etc., and because said evidence was not competent under the declaration and the Employers' Liability Act of 1908, which refer only to negligent omissions in the performance of duty and not to intentional omissions in original design or construction; but the Court overruled said objection and permitted said question to be asked and the answer thereto to be given to the jury, whereupon counsel for the defendant then and there excepted to said ruling of the Court and said exception was duly entered upon the minutes of the Court. And thereupon said counsel



for the plaintiff repeated said question and the same was answered by the witness as follows:

“Q. Repeating my question, the evidence shows that the nearest pier or abutment to the point of switch No. 8, or the ladder track at the point of switch No. 8, is five feet four inches from the abutment; that the targets on No. 7 and No. 6 switches are within three feet six inches of the ladder track; that from the point of No. 8 switch to the south end of the abutment is eighteen feet, and from the south end of the abutment to No. 7 switch is seventy-  
45 five feet, or ninety-three feet between the point of switch No. 8 and the point of switch No. 7; that from No. 7 switch to No. 6 switch it is sixty-eight feet; and from No. 8 switch to No. 9 switch it is sixty-five feet six inches. You have been down and have gone over those tracks down there. It appears that the nearest pier to the ladder track at the point of switch No. 8 is five feet four inches. I will ask you to tell the jury, after your examination of those tracks, if a target light could have been properly put and located at the end of switch No. 8? A. My observation of the layout of those tracks down there would indicate to me that it would have been a matter of practical impossibility to properly locate a target of the character of the targets that were used there at No. 8 switch, and do it safely.”

Thereupon counsel for the plaintiff propounded to said witness the following question:

“Can you tell the jury whether or not a target could have been properly and safely located in connection with switch No. 8, as these yards are now constructed, so that that target could have been observed by the employees of the Company operating upon that yard?”

To which question counsel for the defendant interposed and objected for the reasons already given as aforesaid, but the Court overruled said objection and permitted said question to be asked and the answer thereto to be given to the jury, to which ruling of the Court counsel for the defendant then and there excepted, which exception was duly entered at the time upon the minutes of the Court.

46 Whereupon said witness answered said question as follows:

“I think it would have been possible to have indicated the position of the switch by a target, by means of mechanical connections, and a high target. These are low targets here. There could have been mechanical connections, and the rod run underneath the track, leading out from the point of No. 8 switch and running up close to the abutment at the side; which in my opinion would have served the purpose perfectly, and given a good indication for that switch. Those things are located, and switches are indicated in that position in quite a number of instances that I know of.

“Mr. FLANNERY: I object to the answer of the witness, and move to strike out, especially, the last part, which I think is very objectionable. The question is not what was done by other companies under other conditions.

“The COURT: No; the question is what is a reasonable and safe appliance, and there is where you get into difficulty now.



"Mr. Cox: The last part of the answer was not responsive to the question, and I think might go out.

"The COURT: Very well. (To the jury.) Do not pay any attention to that part of the answer which indicates that he knows of places where it has been done."

On cross examination said witness further testified that the targets are directly connected with the switch levers; that when the lever is thrown it turns the light in the target; that the position of the target has a great deal to do with the position in which you  
47 are compelled to put the lever, and that if the space between the tracks or between the track and some obstruction like a pier-head is not sufficient for the lever, that governs to a great extent the position of the light.

And thereupon it was agreed by and between counsel for plaintiff and defendant that the train rules of the defendant company and the photographs used in the examination of the witnesses might be considered in evidence.

And thereupon counsel for plaintiff announced their testimony closed.

And thereupon the defendant to maintain the issues upon its part joined gave evidence by the witnesses hereinafter named, tending to prove as follows:

68

ROBERT FARNHAM, a witness called on behalf of the defendant, testified that he was a civil engineer in the employ of defendant company; that in the year 1908 and for 5 or 6 years prior thereto he was in charge of the Washington improvements in eliminating grade crossings, and had charge of the construction of the bridges in the vicinity of 12th Street, the lay-out of the tracks there, the placing of switches, switch lamps, etc.; that a switch target was omitted on No. 8 switch because there was not room between the rail and the buffer wall of the bridge to allow the men to work in there and to operate, therefore the target had to be left out and the lever put on the other side of the track in order to keep the men from getting into a position where they would be squeezed

48 between the wall and the rail; that it would have been possible to place the target anywhere, but it would not have meant anything in regard to that switch unless it was placed right at the point of the switch.

On cross examination said witness testified that he was practically told to place the switches at that point by the defendant company, and in locating No. 8 switch where he did he acted under the directions of the defendant; that they had to fit the conditions, to get as much yard room as they could, but it was impossible to get that switch away from the buffer wall; they had to locate it there in order to get anywhere near the same amount of yard room; that in order to get longer tracks he located this switch for siding No. 8 under the bridge between the abutments, under the direction of the defendant and in accordance with the plan agreed upon by everybody concerned,—that is, everybody on the railroad, and approved by the District Commissioners; that his recollection is that



to have shortened the tracks would have made the curve so excessive that they would have had to abandon some track entirely—to give up a track, so that in trying to get all the tracks in there it became necessary to locate the switch at this point; that they could have put the target there by shortening up the rods, but it would have been bad practice and unsafe, it would have attracted the men to that side of the track, where they would have been in danger of being crushed between the car and the pier. And thereupon said witness was asked the following question and answered the same as follows:

“Q. Suppose you had put the target a little beyond the abutment, by lengthening the levers that work the target from the switch. Could you not have done that? Would not the men have  
49 learned that that was the odd switch target standing off there a little distance, and known that as No. 8? A. Hardly much better than they would have got used to the fact that there was no target at all. It would have conflicted with the target for the next switch. It would have been very close to it.”

And thereupon said witness on cross examination further testified that he imagined the distance between the points of the two switches was about 80 feet, and this would have made it about 40 feet from the other target; that if that switch had been located up there 40 feet, the men working about the yards might have learned or have been able to recognize it as the target for switch No. 8, that he imagined they would have.

On re-direct examination said witness testified that it would have conflicted because the targets would have been very close, closer than any two switch targets are ever put.

And thereupon said witness on re-cross examination testified as follows:

“Q. Instead of being eighty feet from the others there would have been forty feet or fifty feet between it and the others? A. And it may have been that they were directly in line, and you would have only have seen one target which would have been a great deal more dangerous than having none at all.

“Q. You cannot say that positively? A. I cannot.

50 “Q. The only effect would have been to put that target within about forty feet of the others, if located as indicated in my previous question? A. It would have been an unusual practice, and a great deal more dangerous, to our way of thinking, than leaving the target off, and notifying trainmen that there was no target.

“Q. So you located it down there because you did not have room, and that was the usual place to locate it, and you considered it better practice? A. There are certain limitations in laying out a yard that have to be taken into account.

(This witness testified out of order, being called just after the witnesses Bell and Towney, who testified on behalf of the plaintiff.)

WILLIAM F. GREENE, a witness called by and on behalf of the



defendant, testified that he was a civil engineer by profession and had been following that profession since January 1899; that in May 1908 he was Supervisor of Tracks for defendant company in Washington and had held that position since May 1, 1905; that he had had charge of the maintenance of the 12th and 14th Street yard of the defendant; that there was no target opposite the point of No. 8 switch because there was no place to put a target there, the switch target is located about three feet six inches from the nearest rail, and the clearance of No. 8 switch between the nearest rail and the abutment is 5.3 feet, that by placing a switch lamp as you would

51 have to do at a distance of three feet six inches, it would place the lamp in the path of the train men when they walked back and forth making cuts; that these targets are attached to and operated by ground levers; that No. 9 switch had a ground lever known as the New Century Switch Stand, indicated on the photograph No. 78; the lever and switch operate together; the lever for No. 8 switch was on the opposite or north side of the ladder track, between No. 8 and No. 9 track, and the levers for the balance of the switches were on the opposite side; that they could not put the switch lever for No. 8 track on the south side because it would have been in the way of the men passing back and forth between the track and the pier. And thereupon said witness on direct examination further testified as follows:

"Q. Was it possible to have put either a target or a switch lever connected with a target at any point nearby the opening of No. 8 switch, so as to indicate when that switch was opened and closed? Was it possible to put that target at any other point? A. No, sir.

"Q. If it had been placed at any other point what effect would it have had upon the operations of the other switches and the other targets that we see indicated on this photograph, for No. 7, No. 9 and No. 6? A. The lights would have been confused with the other switch lamps.

"Q. When was this yard opened for business, Mr. Greene? A. October 1st, 1907.

52 "Q. At the time it was opened was any switch target provided for No. 8 switch? A. No, sir.

"Q. And between that time and the date of this accident was any change made in that situation? Was any light provided? A. No, sir.

"Q. When a switch of this kind has no target, how do you tell whether it is open or closed? A. By the position of the switch point.

"Q. By 'switch point' do you mean these pointed ends indicated on these photographs (indicating)? A. Yes, sir; the point indicated by your pencil.

"Q. And when they are closed the point and the rail are together? A. Yes, sir.

"Q. And when opened they are spread out, spread apart? A. Yes, sir.

"Q. When there is no target how do you tell whether the switch points are opened or closed? A. By observing the switch points.

"Q. Was there any other switch in this vicinity, in this yard,



that had no target? A. None in this yard, but there were switches in this vicinity."

On cross examination said witness testified that his duties related to the maintenance of the tracks and he had nothing to do with the locating of the yard, but had something to do with the locating of the targets; that in locating them he simply followed the instructions of his superiors; that he could not recall the  
53 distances exactly, but as nearly as he could recall it was about 70 feet between switches No. 8 and 9, about 80 feet between No. 7 and 8. And thereupon said witness on cross examination further testified as follows:

"Q. Why could not switch No. 8 have come in nearer to No. 7? One of the witnesses testified, by actual measurement, that there is 93 feet between the points of those switches. Why could not switch No. 8 have been moved down towards switch No. 7 so as to have gotten it out from under that abutment entirely? A. To make such a construction would spoil the arrangement of the yard, which had been approved by the Commissioners.

"Q. It was located there; and there was no reason why it should not have been located somewhere else within the 93 feet, especially, that you know of. All you know is that you were instructed to locate the targets on the tracks. A. I had nothing to do with the location of the switches.

"Q. You do not know of any reason why it should not have been located nearer No. 7 switch? A. Except that it would spoil the arrangement of the yard, and it was not physically possible to do it."

EDEN B. HUNT, a witness called by and on behalf of the defendant, testified that he was Assistant Superintendent of the Pennsylvania Railroad Voluntary Relief Department, which department operates the four relief funds of the defendant, the Philadelphia, Baltimore & Washington Railroad Company, the Northern Central  
54 Railroad Company, the West Jersey Railroad Company and the Pennsylvania Railroad Company; that the same officers are in charge of each fund, and that he was Assistant Superintendent of these respective relief funds and had the custody of the records showing the payments into those various funds and payments made out on account thereof. And thereupon said witness testified that he was the custodian of and produced a card record of the absences of Theodore A. Schubert, holding certificate No. 247,018, which record of absences was prepared from papers received from division officers and medical examiners; that this record showed the absences on account of injury of said Schubert between October 18, 1905 and the date of the accident in May 1908; that it did not show the amount of the benefits paid to him, but that he (witness) could and did calculate the amount of such benefits by knowing the class of which Schubert was a member; that he was able to state accurately the amount that Schubert received during the period of time just mentioned, on account of disablement; that his records also showed the amounts contributed by the defendant

for or on behalf of the relief fund of that company of which Mr. Schubert was a member.

And thereupon the defendant further to maintain the issues upon its part joined offered in evidence in release and bar of the plaintiff's right to recover in this action the plaintiff's application and contract of membership in said relief fund and the three separate receipts given by the plaintiff for payments made to him out of said fund, the signatures to which papers had been admitted by the plaintiff and which papers had been marked for identification, and also offered in evidence in connection therewith and for the same purpose the certificate of membership in the relief fund of the Pennsylvania Railroad Voluntary Relief Department, No. 247,018, and the book of regulations forming a part thereof, which had been issued to plaintiff, and the original of which had been produced by him in response to notice.

The aforesaid papers so offered in evidence by counsel for the defendant are in the words and figures following, to wit:

R. D. 53.

S 43 6 11 1904.

Philadelphia, Baltimore & Washington Railroad Company.

Relief Department.

*Application for Membership in the Relief Fund.*

To the Superintendent of the Relief Department:

- 1 I, Theodore Albert Schubert of Washington, D. C., in the county of ———
- 2 and state of ——— employed —
- 3 in the service of the Philadelphia, Baltimore & Washington Railroad Company,
- 4 as Brakeman upon the Maryland Div. C. T. Department,
- 5 do hereby by reason of such employment, apply for membership in the Relief Fund and consent and agree to be
- 6 bound by the Regulations of the Relief Department of the said Company, as contained in the book of said Regulations approved by the Board of Directors, which
- 7 I have read or have had read to me, and by any other regulations of the said Department hereafter adopted,
- 56
- 8 and by the provisions of any agreement or agreements made by the said Company with any other corporation or
- 9 corporations associating in administration of their respective Relief Departments, in accordance with said book of Regulations.
- 10 I also agree, That the said Company, by its proper Agents, and in the manner provided in said Regulations,
- 11 shall apply as a voluntary contribution from any wages earned by me under said employment or from benefits that may hereafter become payable to me at the rate
- 12 of two dollars and ten cents per month, for the pur-



13 pose of securing the benefits provided for in the Reg-  
ulations for a member of the Relief Fund of the Second Class,

a

“and additional death benefit, ——

14 equal to twice the death benefit of the first class.” Unless I shall  
otherwise designate in writing, with

15 the approval of the Superintendent of the Relief Department,

a

death benefit shall be payable to my father

16 Mannassas D. Schubert,

17 Experiment,

18 Amherst Co.,

19 Va.

20

21

22

23 And if any person now or hereafter designated by me to re-  
ceive the death benefit shall not be living or shall be inca-  
pacitated for

57

24 executing the requisite receipt and release, or if there shall  
be no such person, the death benefit shall be payable as pro-  
vided in the

25 Regulations of the Relief Department for such event. And  
I agree that the acceptance of benefits from the said Relief  
Fund for

26 injury or death shall operate as a release of all claims for damages  
against said Company, arising from such injury or death, which  
27 could be made by or through me, and I or my legal representa-  
tives will execute such further instrument as may be necessary  
28 formally to evidence such acquittance.

29 I also agree, That this application, when approved by the  
Superintendent of the Relief Department, shall make me a  
member

30 of the Relief Fund on and from the date upon which — the pro-  
visions of the Regulations and the terms of this application,  
31 it takes effect, and shall constitute a contract between myself  
and the said Company, and that the terms of this application  
and the

32 Regulations of said Department shall, during my membership,  
be a part of the conditions of my employment by the Company,  
and

33 that the same shall not be avoided by any change in the character  
of my service, or locality where rendered, while in such employ-  
ment,

34 nor by any change in the amounts applicable from my wages  
to the Relief Fund, which I may hereafter consent to, and that  
the

58

35 agreement that the above-named amounts shall be appropriated  
36 from my wages shall apply also to any other amounts arising from  
36 changes made as aforesaid and shall constitute an appropriation  
and assignment in advance, to the said Company in trust,  
for the

37 purposes of the Relief Fund, of such portions of my wages, which  
assignment shall have precedence over any other assignment by  
38 me of my wages, or of any claim upon them on account of  
liabilities incurred by me.

39 I also agree, for myself, and those claiming through me, to be  
especially bound by Regulations numbered 65, providing for  
final

40 and conclusive settlement of all disputes, by reference to the  
Superintendent of the Relief Department and an appeal from his  
41 decision to the Advisory Committee.

42 I certify that I am correct and temperate in my habits; that  
so far as I am aware I have no injury or disease, constitutional or  
43 otherwise, which will tend to shorten my life, and am now in  
good health and able to earn a livelihood.

44 I also agree, That any untrue or fraudulent statement made by  
me to the Medical Examiner, or any concealment of facts in  
59

45 this application, or resignation from the service of the said com-  
pany or my being relieved from employment and pay therein  
at the

46 pleasure of the Company or its proper officers, shall forfeit my  
membership in the aforesaid Relief Fund and all benefits,  
rights or

47 equities arising therefrom, excepting that my leaving the serv-  
ice shall not (in the absence of any of the other foregoing causes  
of

48 forfeiture) deprive me of any benefits of which I shall have  
previously become entitled by reason of accident or

49 sickness occurring while in the service.

50 This application to take effect the Eighteenth day of October,  
A. D. 1905.

51 if I shall be on duty on that date; otherwise upon the date of  
my going on duty thereafter.

52 In Witness Whereof, I have signed these presents at Washing-  
ton, D. C., in the county of —

53 State of — this twenty sixth

54 day of October, A. D. 1905.

Witness:

THEODORE ALBERT SCHUBERT.

P. H. STELTZ, JR.

*witness to "Mannassas", in signature of father corrected.*

P. H. STELTZ, JR.

R. D. BARRATT,

*witness to*

MANNASSAS D. SCHUBERT,  
(Father assenting.)



The foregoing application is approved at the office of the Superintendent of the Relief Department at Philadelphia, in the county of Philadelphia, State of Pennsylvania, this eighteenth day of December, A. D. 1905.

No. 247018.

E. B. HUNT,

*Assistant Superintendent of the Relief Department.*

60      a. If no additional death benefit is taken in this application, draw lines through the words "and additional death benefit" and all following, to and including the word "class" in the next line. If no beneficiary is specially designated draw lines through the blank space. These are not to be noted by the witness.

Record W.	Card T.	Statistics	B
Cert.	Dept. 688		
Issued. 12/18/05	S. ? DTM	SWT	C

Questions Answered by Applicant for Membership, in Connection with Annexed Application.

- |  |   |
|--|---|
| 1. What is your name in full, including given name?  | 1. Theodore Albert Schubert.  |
| 2. When were you born?   | 2. Dec. 3rd, 1884.  |
| 3. Where were you born?  | 3. Levy Co. Florida.  |
| 4. Are your parents living? If so, give their names. If not living, give age at, and cause of death. | 4. Father. Mannassas D. Schubert. Mother. Deceased—38 years—Unknown.      |
| 5. Are you married or have you been? If wife (or husband), living give name.                         | 5. No.  |
| 6. Have you any children living? If so, give names and ages. If none, so state.                      | 6. None.  |
| 7. What are the names of your brothers and sisters? (If married this question need not be answered.) | 7. Pearl B.—No brothers deceased.<br>Edith I. Turner—no sisters deceased. |

61

- |  |   |
|--|---|
| 8. Have you been furnished with a copy of the book of regulations of the Pennsylvania Railroad Voluntary Relief Department? Yes. |   |
| 9. Can you read print? Yes.  | 10. Have you read those regulations? Yes. |
| 11. Have you had those regulations read to you? No.  |   |
| 12. Have you had a sunstroke? No.  |   |
| 13. Are you a subject to fits. No.   |   |
| 14. Have you a stricture? No.  |   |
| 15. Have you hemorrhoids? No.  |   |
| 16. Have you a rupture? No.  |   |
| 17. Have you had articular rheumatism? No.   |   |

18. Have you had small-pox? No.
19. Have you been vaccinated? Yes.
20. Have you any other disease or physical infirmity? No.
21. Is there any disease you are likely to have inherited? No.
22. Do you know of any reason why you should not be accepted? No.
23. Have you ever been employed by any of the Companies associated in the administration of the Relief Department? If so, give name of Company, character and dates of employment with each Company, including the present service. Since Oct. 18th, 1905 as Brakeman upon the Maryland Div. C. T. Dept.

I have read or have had read to me the above questions and the answers, and do hereby certify that the answers are true to the best of my knowledge and belief.

Signature of applicant.

THEODORE ALBERT SCHUBERT.

Witness:

The following made before execution:

In answer to Question 7 name "Pearl B" corrected.

P. H. STELTZ, JR., M. D.

Oct. 26th, 1905.

62

- |  |                                  |
|--|----------------------------------|
| 24. Intelligence.  | 24. Average.                     |
| 25. General development.                                   | 25. Muscular.                    |
| 26. Height.  | 26. 5 ft. 10½ in.                |
| 27. Weight.  | 27. 157 lbs.                     |
| 28. Chest measure.   | 28. 36 in. (full insp.)          |
| 29. Abdominal measure.                                     | 29. 30 in.                       |
| 30. Sex.   | 30. Male.                        |
| 31. Hair.  | 31. Brown.                       |
| 32. Complexion.  | 32. Fair.                        |
| 33. Eyes.  | 33. Blue.                        |
| 34. Special senses.  | 34. Normal.                      |
| 35. Head and face.   | 35. Normal.                      |
| 36. Abdomen and groins.                                    | 36. Normal.                      |
| 37. Spine and joints.                                      | — Normal.                        |
| 38. General surface.                                       | — Normal.                        |
| 39. Heart: <i>a.</i> Number and character of pulse beats.  | 39. <i>a.</i> 74—full & regular. |
| <i>b.</i> Where apex beats.                                | <i>b.</i> Normal.                |
| <i>c.</i> Auscultation.                                    | <i>c.</i> Normal.                |
| <i>d.</i> Blood-vessels.                                   | <i>d.</i> Normal.                |
| 40. Lungs: <i>a.</i> Number and character of respirations. | — <i>a.</i> 18—easy—abdominal    |
| <i>b.</i> Percussion.                                      | <i>b.</i> Resonant.              |
| <i>c.</i> Auscultation.                                    | <i>c.</i> Normal.                |
| <i>d.</i> Character of respiratory murmur.                 | <i>d.</i> Vesicular.             |



- |  |                             |
|--|-----------------------------|
| 41. Kidneys and bladder.                                   | 41. No evidence of disease. |
| 42. Cachesia, Diatheses, temperate, &c.                    | 42. None, — temperate.      |
| 43. Opinion as to applicant's statement after examination. | 43. Truthful.               |
- 63
- |   |                 |
|---|-----------------|
| 44. Opinion of applicant's chances for longevity. | 44. Expectancy. |
| 45. Vaccinated when examined.                     | 45. No.         |
| 46.   | 46.             |
| 47. If applicant rejected, for what cause.        | 47.             |

I certify that the above questions were answered advisedly as stated therein, by the person named as applicant in the annexed application, that the description and facts relating to the applicant are as ascertained from him, that I have carefully examined him, that the above is a correct sketch of his existing condition, according to my best of knowledge and belief, and I do hereby, approve said (cant)

application as physically qualified.

Place and date of examination, Washington, D. C., Oct. 26th, 1905.

P. H. STELTZ, JR., M. D.,  
*Medical Examiner.*

The above certificate examined and applicant found physically qualified.

F. W. LATTA, M. D.,  
*Chief Medical Examiner.*

Philadelphia, Pa., Nov. 3, 1905.

10/26/05 per RD 175 attached O. D. 28.

HL B. No. 1a

64

R. D. 53.

Philadelphia, Baltimore & Washington Railroad Co.

Relief Department.

Application for Membership in the Relief Fund.

Do not fill up these blanks.

Number \_\_\_\_.

Name \_\_\_\_.

Post office \_\_\_\_.

Division \_\_\_\_.

Road, Shop, or Office, &c. \_\_\_\_.

Department \_\_\_\_.

65 R. D. 65.

(HL. B. No. 1.)

The Pennsylvania Railroad Voluntary Relief Department.

Office of the Superintendent.

Order No. 50841.

PHILADELPHIA, PA., *Jun- 3, 1908.*

Treasurer Pennsylvania Railroad Company, Philadelphia, Penna.

Will pay T. A. Schubert, Certificate No. 247018, employed as Brakeman, by the Philada. Balt. & Wash. Railroad Company. Eighteen Dollars \$18.# Benefits for 18 days from May 14, to 31 inclusive, on account of accident and charge "Relief Fund Orders".

Approved for payment.

J. C. VAN RODEN,  
*For Superintendent.*

46. (S.) F. W. HUTCHINSON,  
*For Comptroller.*

Received June 12, 1908, Eighteen Dollars in full for the H.  
above order.

(Signature)

T. A. SCHUBERT.

Witness:

(S) C. M. WATTS.

Read This receipt must be dated, signed by the person in whose  
This. favor is drawn, and witnessed by some one knowing the  
signer to be the proper person. The signature must con-  
form to the name as written in the order. A person unable to sign  
will make his mark.

[On margin:] This order is payable by any Freight or Passenger  
Agent of the Pennsylvania R. R. Company's system east of Pitts-  
burgh and Erie or by any Bank designated as a depository of the  
Company, when receipted in accordance with instructions below.

Endorsement on back:

Theo. A. Schubert.

Pay to the order of any Bank or Banker,  
all prior endorsements guaranteed,  
The National Capital Bank,  
of Washington, D. C.  
H. H. McKee, Cashier.

Payment Received  
Jun- 15, 1908.  
The Philad'a Nat'l Bank.  
H. J. Keser, Cashier.



66 R. D. 65.

(HL. B. No. 1b).  
CEW.

The Pennsylvania Railroad Voluntary Relief Department.  
Office of the Superintendent.

Order Number 51194.

PHILADELPHIA, PA., *Jul- 6, 1908.*

Treasurer Pennsylvania Railroad Company, Philadelphia, Penna.

Will pay T. A. Schubert, Certificate No. 247018, employed as Brakeman, by the Philada. Balt. & Wash. Railroad Company Thirty Dollars \$30. # Benefits for 30 days from June 1 to 30 inclusive, on account of Accident and charge "Relief Fund Orders".

Approved for payment.

J. C. VAN RODEN,  
*For Superintendent.*

46. (S.) F. W. HUTCHINSON,  
*For Comptroller.*

Received July 10, 1908 Thirty Dollars in full for the H.  
above order.

(Signature)

T. A. SCHUBERT.

Read This receipt must be dated, signed by the person in whose  
This. favor is drawn, and witnessed by some one knowing the  
signer to be the proper person. The signature must con-  
form to the name as written in the order. A person unable to sign  
will make his mark.

[On margin:] This order is payable by any Freight or Passenger  
Agent of the Pennsylvania R. R. Company's system east of Pitts-  
burgh and Erie or by any Bank designated as a depository of the  
Company, when receipted in accordance with instructions below.

Endorsements on back:

The Washington Terminal Co.  
Jul- 11, '08.  
Washington, D. C.

For Deposit  
Phila. Balto. and Washn. R. R. Co. 4  
Jos. Kamps, Agent,  
Washington, D. C. Station.

Received Payment  
July 14, 1908,  
Market Street National Bank,  
W. P. Sinnett, Cashier.

Pay to the order of any Bank or Banker, prior endorsements  
guaranteed. National Metropolitan Bank, L. Gales Moore, Cashier.

67 R. D. 65.

H. L. P. No. 1c.  
EW.

The Pennsylvania Railroad Voluntary Relief Department.

Office of the Superintendent

Order Number 51532.

PHILADELPHIA, PA., Aug. 4, 1908.

Treasurer Pennsylvania Railroad Company, Philadelphia, Penna.

Will pay T. A. Schubert Certificate No. 247018 employed as  
Brakeman by the Philada. Balt. & Wash. Railroad Company Thirty-  
one Dollars \$31. # Benefits and charge "Relief Fund Orders".

Approved for payment.

46.

J. C. VAN RODEN,  
*For Superintendent.*F. W. HUTCHINSON,  
*For Comptroller.*

Received Aug. 7, 1908, Thirty-one Dollars in full for the above  
order.

(Signature)

T. A. SCHUBERT.

Witness:

C. M. WATTS.

A.

Read This receipt must be dated, signed by the person in whose  
This. favor is drawn, and witnessed by some one knowing the  
signer to be the proper person. The signature must con-  
form to the name as written in the order. A person unable to sign  
will make his mark.

[On margin:] This order is payable by any Freight or Passenger  
Agent of the Pennsylvania R. R. Company's system east of Pitts-  
burgh and Erie or by any Bank designated as a depository of the  
Company, when receipted in accordance with instructions below.

Endorsements on back:

A. G. Fraveis.

For Deposit

Phila., Balto. and Washn. R. R. Co.,

Jos. Kamps, Agent,

Washington, D. C., Station.

Pay to the order of any Bank or Bankers,

Prior endorsements guaranteed

National Metropolitan Bank,

L. Gales Moore, Cashier.

Received Payment,

Aug. 11, 1908,

Market Street National Bank

W. P. Sinnett, Cashier.







THE PENNSYLVANIA RAILROAD VOLUNTARY RELIEF DEPARTMENT 40

Certificate of Membership in the Relief Fund.  
No. 247018

Office of the Superintendent, Philadelphia, Pa., Oct. 18, 1905.

THIS CERTIFIES That Theodore A. Schubert employed by  
THE PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY  
is a member of the Relief Fund of that Company, and is entitled  
to the Benefits provided by the Regulations of the Relief De-  
partment for a member of the second class, with two additional  
Death Benefits of the first class.

(Signed) E. B. Hunt  
Assistant Superintendent  
of the Relief Department.

**BEST COPY AVAILABLE**

from the original bound volume





**CERTIFICATE**  
**OF**  
**MEMBERSHIP IN THE RELIEF FUND**  
**AND**  
**REGULATIONS**  
**GOVERNING**  
**THE PENNSYLVANIA RAILROAD VOLUNTARY**  
**RELIEF DEPARTMENT.**



REGULATIONS

GOVERNING

THE PENNSYLVANIA RAILROAD  
VOLUNTARY  
RELIEF DEPARTMENT.

Being an Association in joint administration of the Relief Departments  
of the following corporations, approved by the several  
Boards of Directors:

THE PENNSYLVANIA RAILROAD COMPANY,  
THE NORTHERN CENTRAL RAILWAY COMPANY,  
THE PHILADELPHIA, BALTIMORE & WASHINGTON R. R. CO.,  
THE WEST JERSEY & SEASHORE RAILROAD COMPANY.

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TAKING EFFECT FEBRUARY 1, 1886,  
MODIFIED FROM MAY 1, 1886,  
AMENDED TO TAKE EFFECT OCTOBER 1, 1887,  
MARCH 1, 1889, JUNE 1, 1891, APRIL 1, 1892,  
JANUARY 1, 1897, JANUARY 1, 1900,  
JANUARY 1, 1902,  
AND JANUARY 1, 1904.



## THE PENNSYLVANIA RAILROAD VOLUNTARY RELIEF DEPARTMENT.

### DESCRIPTION OF THE METHOD OF ASSOCIATION IN JOINT ADMINISTRATION OF THE RELIEF DEPARTMENTS OF THE FOLLOWING NAMED COMPANIES.

Modified—January 1st, 1892, upon the withdrawal of the Baltimore & Potomac Railroad Company;  
January 1st, 1902, to cover representation of the Buffalo & Allegheny Valley Division of the Pennsylvania Railroad Company on the Advisory Committee.

The Northern Central Railway Company, the West Jersey Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company and the Camden & Atlantic Railroad Company, having each adopted a Relief Department similar in plan to that adopted by the Pennsylvania Railroad Company, as in the Regulations herein-after printed, and being associated in interest with that Company, have associated themselves in the administration of their several Relief Departments with the said Pennsylvania Railroad Company by agreement in the following form:—

“*Memorandum of Agreement* entered into this  
“ day of , 1886,  
“ between the Pennsylvania Railroad Company, party of  
“ the first part, and the Northern Central Railway Company,  
“ the West Jersey Railroad Company, the Philadelphia, Wil-  
“ mington & Baltimore Railroad Company and the Camden &  
“ Atlantic Railroad Company, parties of the second part.

“ *Whereas*, The Pennsylvania Railroad Company, party of  
“ the first part, has established a Relief Department for the





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The Northern Central Railway Company, the West Jersey Railroad Company, the Philadelphia, Wilmington & Baltimore Railroad Company and the Camden & Atlantic Railroad Company, having each adopted a Relief Department similar in plan to that adopted by the Pennsylvania Railroad Company, as in the Regulations hereinafter printed, and being associated in interest with that Company, have associated themselves in the administration of their several Relief Departments with the said Pennsylvania Railroad Company by agreement in the following form:—

“*Memorandum of Agreement* entered into this  
“ day of , 1886,  
“ between the Pennsylvania Railroad Company, party of  
“ the first part, and the Northern Central Railway Company,  
“ the West Jersey Railroad Company, the Philadelphia, Wil-  
“ mington & Baltimore Railroad Company and the Camden &  
“ Atlantic Railroad Company, parties of the second part.

“*Whereas*, The Pennsylvania Railroad Company, party of  
“ the first part, has established a Relief Department for the



"benefit of its service and employes, a copy of the plan of  
"which is hereto attached and marked Exhibit A, and

"Whereas, The said parties of the second part have also  
"each adopted a plan similar as to form, and

"Whereas, Each of said plans contains, among other things,  
"the following, namely:—

"Should any other corporation or corporations associated  
"in interest with this Company, adopt or have adopted regu-  
"lations establishing Relief Departments similar to the one  
"hereby established, this Company shall have power to asso-  
"ciate itself with such corporation or corporations in the  
"administration of the Relief Departments hereby and thereby  
"established, when so authorized by the respective boards of  
"directors of this and said corporation or corporations.

"Such association shall be evidenced by agreement or  
"agreements duly executed authorizing, among other things,  
"the constitution of a Joint Advisory Committee, to be chosen,  
"as and in the manner herein prescribed, by the several parties  
"thereto, and their employes, either by separate action in  
"behalf of each of said parties, or by the united action of  
"two or more of them as to any member or members of said  
"Committee; the original Committee to be constituted and  
"vacancies occurring thereafter to be filled, in such manner  
"as shall be prescribed.

"In the event of any association as aforesaid, the functions  
"and powers herein given to and vested in the Advisory Com-  
"mittee created as hereinbefore provided, shall during the  
"continuance of said agreement or agreements, be transferred  
"to and vested in the Advisory Committee constituted as  
"prescribed in said agreement or agreements, chosen as therein  
"directed, and so much of the Organization and Regulations  
"of the Relief Department herein provided for, as relates to  
"the constitution of an Advisory Committee consisting solely  
"of officers and employes of this Company, shall be sus-  
"pended, with the understanding, however, that upon the  
"determination of such agreement or agreements, the Advisory  
"Committee herein provided for, constituted as herein pre-

"scribed, shall reassume the functions and duties herein  
"committed to it.

"And Whereas, The Companies, parties hereto, being asso-  
"ciated in interest, it has been deemed wise, in order to  
"secure uniformity as well as economy in operation and  
"management, that there should be a substantial identity of  
"persons in the principal control of the said relief plans  
"respectively, and particularly that one Joint Advisory  
"Committee should stand for and represent respectively as  
"well the party of the first part as the several parties of the  
"second part.

"Therefore this Agreement Witnesseth, That the said parties  
"do hereby, in consideration of the premises, mutually  
"covenant and agree as follows:—

"FIRST, That each of the parties hereto having now the  
"same person as General Manager, shall also designate the  
"same persons to act as Superintendent of the Relief Depart-  
"ment, and any other general officers necessary for conducting  
"the business thereof, and the same location for its office, and  
"do particularly agree that the Treasurer, for the time being,  
"of the Pennsylvania Railroad Company shall be Treasurer  
"of the Relief Fund of each of the said corporations.

"SECOND, That a Joint Advisory Committee possessed with  
"all the powers of the several Advisory Committees pro-  
"vided for in the plans of said corporations, parties hereto,  
"shall be constituted as follows:—

"The General Manager shall be *ex-officio* a member and  
"chairman, and the Superintendent Secretary, of the Com-  
"mittee. The other members of the Committee shall be  
"members of the Relief Fund. They shall be chosen in the  
"month of November, to serve from the first day of Jan-  
"uary next succeeding, for periods hereinafter stated, and  
"until their successors are chosen, as follows:—

"By the contributing employes of the Pennsylvania Rail-  
"road Division of the Pennsylvania Railroad, from among  
"themselves, one member;

"By the contributing employes of the United Railroads  
"of New Jersey Division of the Pennsylvania Railroad, from  
"among themselves, one member;



"By the contributing employes of the Philadelphia & Erie Railroad Division of the Pennsylvania Railroad, from among themselves, one member;

"By the contributing employes of the Buffalo & Allegheny Valley Division of the Pennsylvania Railroad, from among themselves, one member;

"And by the Board of Directors of the Pennsylvania Railroad Company, four members:

"By the contributing employes of the Northern Central Railway Company, from among themselves, one member;

"And by the Board of Directors of that Company, one member:

"By the contributing employes of the Philadelphia, Baltimore & Washington Railroad Company, from among themselves, one member;

"And by the Board of Directors of that Company, one member:

"By the contributing employes of the West Jersey & Seashore Railroad Company, from among themselves, one member;

"And by the Board of Directors of that Company, one member.

"Members of the Committee chosen in the month of November, 1904, shall be chosen to serve as follows:—

"Those chosen by the contributing employes of the Pennsylvania Railroad Division, and one of those chosen by the Board of Directors of the Pennsylvania Railroad Company, to be designated by said Board, for the period of three years.

"Those chosen by the contributing employes of the Philadelphia & Erie Railroad Division and the Buffalo & Allegheny Valley Division of the Pennsylvania Railroad Company, and the Northern Central Railway Company, and two of those chosen by the Board of Directors of the Pennsylvania Railroad Company, to be designated by said Board, as well as the member chosen by the Board of Directors of the Northern Central Railway Company, for the period of one year.

"Those chosen by the contributing employes of the United Railroads of New Jersey Division of the Pennsylvania

"Railroad Company, the Philadelphia, Baltimore & Washington Railroad Company and the West Jersey & Seashore Railroad Company, and one of the members chosen by the Board of Directors of the Pennsylvania Railroad Company and the members chosen by the Board of Directors of the latter two Companies, for the period of two years.

"The successors of the members chosen as before mentioned, shall be chosen to serve for the period of three years respectively.

"The members selected by the contributing employes shall be chosen by ballot, the vote being taken and certified by tellers selected by the Joint Advisory Committee. In balloting for members of the Committee, each contributing employe, member of the Relief Fund, will be entitled to cast one vote.

"Under this agreement, to fill vacancies occurring on the Advisory Committee the members to represent the contributing employes shall be designated by the General Manager, and the members to represent the Company shall be chosen by the several Boards of Directors, such members to serve until their successors are duly chosen as above.

"THIRD, That nothing herein contained shall be held to alter or modify any part of the existing Organization and Regulations of the several parties hereto, save in so far as is expressed herein or may be necessary to carry out the true purpose and intent hereof; nor to make any party hereto, chargeable for the collection of moneys on behalf of the employes, members of the respective Relief Funds, or liable for the benefits payable to such employes, of any other party to this agreement, this union being simply for the purpose of administration and economical management, each party hereto, in behalf of itself and its employes, agreeing to appropriate its ratable proportion of the joint expenses of administration and management, and the entire outlay necessary to make up deficits for benefits to its own employes.

"FOURTH, That none of the parties hereto shall, during the continuance of this agreement, make any change in either the Organization or Regulations, as now existing,



"save only subject to the approval and adoption thereof, by  
"each of the other parties hereto.

"FIFTH, That for convenience of designation, the joint  
"operations of the said Relief Departments shall be conducted  
"under the title of 'The Pennsylvania Railroad Voluntary  
"Relief Department,' all applications by employes, and the  
"agreements therein made being, however, to and with the  
"Company in whose service the applicants shall be.

"SIXTH, That any party hereto may withdraw from this  
"agreement at any time after three years from the date hereof  
"upon three months' written notice to the other parties of  
"their purpose so to do. This agreement shall, however, con-  
"tinue in full force and effect as to parties hereto not with-  
"drawing, so long as there shall remain two or more such  
"Companies, and the Advisory Committee thereafter shall  
"consist of the members chosen and to be chosen by the  
"remaining parties to the agreement and their employes,  
"as herein provided, in addition to the *ex-officio* member.

"In Witness Whereof, The said parties hereto have placed  
"their corporate seals, duly attested, the day and date above  
"written."

[Here follow signatures.]

The "West Jersey & Seashore Railroad Company," successor by  
consolidation and merger of the "West Jersey Railroad Company" and  
the "Camden & Atlantic Railroad Company," effective May 4th, 1896,  
has become substituted for said last two mentioned Companies.

The "Philadelphia, Baltimore & Washington Railroad Company,"  
successor by consolidation and agreement of the "Philadelphia, Wil-  
mington & Baltimore Railroad Company," effective November 1st, 1902,  
has become substituted for the latter Company.

"Memorandum of Agreement made this  
"day of \_\_\_\_\_, Anno Domini one thousand nine  
"hundred and one, between the Pennsylvania Railroad Com-  
"pany, the Northern Central Railway Company, the West  
"Jersey & Seashore Railroad Company, and the Philadelphia,  
"Wilmington & Baltimore Railroad Company, associated by  
"agreement in joint administration of their respective Relief  
"Departments, under the name of The Pennsylvania Rail-  
"road Voluntary Relief Department, parties of the first part,  
"and the Pennsylvania Company, the Pittsburgh, Cincinnati,  
"Chicago & St. Louis Railway Company, the Grand Rapids  
"& Indiana Railway Company, the Terre Haute & Logansport  
"Railway Company, the Cincinnati & Muskingum Valley  
"Railroad Company, the Waynesburg & Washington Railroad  
"Company, the Cincinnati, Lebanon & Northern Railway  
"Company, and the Wheeling Terminal Railway Company,  
"associated by agreement in joint administration of their  
"respective Relief Departments under the name of the  
"Voluntary Relief Department of the Pennsylvania Lines  
"West of Pittsburgh, parties of the second part, *Witnesseth*:  
"Whereas, All companies associated in joint administration  
"of The Pennsylvania Railroad Voluntary Relief Depart-  
"ment and all companies associated in joint administration  
"of the Voluntary Relief Department of the Pennsylvania  
"Lines West of Pittsburgh, are related, by community of  
"interest, in such manner as would have justified an asso-  
"ciation in a single joint administration of the Relief De-  
"partments of the several companies already associated in the  
"two Voluntary Relief Departments hereinbefore named,  
"and, had they so associated, the result would have been,  
"under their regulations as respectively adopted, that em-  
"ployes members of the Relief Fund of any one of such  
"companies, transferred to the service of any other of such  
"companies, would, as incident to such transfer, become  
"members of the Relief Fund of the Company to whose ser-  
"vice they were transferred;

"And Whereas, It is desirable that such joint administra-  
"tion of The Pennsylvania Railroad Voluntary Relief De-  
"partment and such joint administration of the Voluntary



"Relief Department of the Pennsylvania Lines West of Pittsburgh should continue, but that the employees members of the Relief Fund of any of the companies associated in joint administration of either of said Voluntary Relief Departments should have all the advantages with respect to change of service which would have resulted had there been but a single joint administration of both Departments:

"Now, Therefore, In consideration of the premises, it is hereby agreed between the parties hereto, in order to accomplish this result:—

"FIRST, That the parties of the first part will amend Regulation No. 17 of the Regulations of their respective Relief Departments by inserting after the second paragraph the following words:

"Any employee, who shall have been transferred from the service of any of the Companies associated in joint administration of the Voluntary Relief Department of the Pennsylvania Lines West of Pittsburgh and shall at the time of such transfer be a member of the Relief Fund of any of the Companies associated in the joint administration of the Voluntary Relief Department of the Pennsylvania Lines West of Pittsburgh, may, regardless of age or physical condition, and upon making the necessary application, become a member of the Relief Fund of the Company to the service of which he may be transferred, in the class and for the additional death benefits, at the same rates, for which he shall have been contributing at the time such transfer is made; provided, that such application is made within thirty days from the time of such transfer to the service of the Company, the Relief Fund of which he desires to become a member.

"SECOND, That the parties of the second part will amend Regulation No. 17 of the Regulations of the Voluntary Relief Department of the Pennsylvania Lines West of Pittsburgh by inserting after the second paragraph the following words:

"Any employee, who shall have been transferred from the service of any of the Companies associated in the joint administration of The Pennsylvania Railroad Voluntary Relief Department and shall at the time of such transfer

"be a member of the Relief Fund of any of the Companies associated in the joint administration of The Pennsylvania Railroad Voluntary Relief Department, may, regardless of age or physical condition, and upon making the necessary application, become a member of the Relief Fund of the Company to the service of which he may be transferred, in the class and for the additional death benefits, at the same rates, for which he shall have been contributing at the time such transfer is made; provided, that such application is made within thirty days from the time of such transfer to the service of the Company, the Relief Fund of which he desires to become a member.

"THIRD, That none of the parties hereto shall, during the continuance of this agreement, make any change in that portion of their respective regulations hereinbefore agreed to be amended, save only subject to the approval and adoption thereof by each of the other parties hereto.

"In Witness Whereof, The said parties have caused their respective corporate seals to be hereunto affixed, duly attested, the day and year hereinbefore written."

[Here follow signatures.]

The "Philadelphia, Baltimore & Washington Railroad Company," successor by consolidation and agreement of the "Philadelphia, Wilmington & Baltimore Railroad Company," effective November 1st, 1902, has become substituted for the latter Company.



## RELIEF DEPARTMENT.

## REGULATIONS.

## GENERAL.

1. The "Relief Department" is a Department of the Company's service in the executive charge of a Superintendent, whose directions in carrying out its regulations are to be complied with, subject to the control of the General Manager.

2. In these regulations, unless otherwise indicated, the titles "Company," "Board of Directors," and "General Manager," will be understood as meaning the Pennsylvania Railroad Company and the Board of Directors and General Manager of that Company.

3. The object of this Department is the establishment and management of a Fund to be known as "The Relief Fund," for the payment of definite amounts to employes contributing to the Fund, who under the regulations shall be entitled thereto, when they are disabled by accident or sickness, and in the event of their death, to the relatives or other beneficiaries specified in the applications of such employes.

4. The Relief Fund, from which the proposed benefits are to be paid, will be formed by voluntary contributions from employes; appropri-



tions, when necessary to make up any deficit, by the Company; and income or profit derived from investments of the moneys of the Fund and such gifts or legacies as may be made to the Company for the use of the Fund.

5. The Company will take general charge of the Department; guarantee the fulfillment of the obligations assumed by it in conformity with the regulations from time to time established; take charge of the funds, and be responsible for their safe-keeping; supply the necessary facilities for conducting the business of the Department, and pay all the operating expenses thereof.

6. There shall be an Advisory Committee constituted as follows:—

The General Manager shall be *ex-officio* a member and Chairman, and the Superintendent Secretary, of the Committee.

The other members of the Committee shall be members of the Relief Fund, and shall be chosen in the month of November, to serve from the first day of January next succeeding, for the periods hereinafter stated, and until their successors are chosen, as follows:—

By the contributing employes of the Pennsylvania Railroad Division, from among themselves, one member;

By the contributing employes of the United Railroads of New Jersey Division, from among themselves, one member;

By the contributing employes of the Philadelphia & Erie Railroad Division, from among themselves, one member;

By the contributing employes of the Buffalo & Allegheny Valley Division, from among themselves, one member;

And by the Board of Directors of the Pennsylvania Railroad Company, four members.

Members of the Committee chosen in the month of November, 1904, shall be chosen to serve as follows:—

One chosen by the contributing employes of the Pennsylvania Railroad Division, and one of those chosen by the Board of Directors of the Pennsylvania Railroad Company, to be designated by said Board, for the period of three years.

One chosen by the contributing employes of the United Railroads of New Jersey Division, and one chosen by the Board of Directors of the Pennsylvania Railroad Company, to be designated by said Board, for the period of two years.

Those chosen by the contributing employes of the Philadelphia & Erie Railroad Division and the Buffalo & Allegheny Valley Division and two of those chosen by the Board of Directors of the Pennsylvania Railroad Company, to be designated by said Board, for the period of one year.

The successors of the members chosen as before mentioned shall be chosen to serve for the period of three years respectively.

The members selected by the contributing employes shall be chosen by ballot, the vote being taken and certified under oath by tellers selected by the Advisory Committee. Each member of the Relief Fund shall be entitled to cast one vote.

To fill vacancies occurring on the Advisory Committee, the members to represent the contributing employes shall be designated by the General Manager, and the members to represent



the Company shall be chosen by the Board of Directors, such members to serve until their successors are duly chosen as above.

If a member of the Committee shall cease to be employed by the Company or upon the road or division for which he has been chosen, or shall for any reason cease to be a member of the Relief Fund, he shall cease to be a member of the Committee.

Should any other corporation or corporations associated in interest with this Company, adopt or have adopted, regulations establishing Relief Departments similar to the one hereby established, this Company shall have power to associate itself with such corporation or corporations in the administration of the Relief Departments hereby and thereby established, when so authorized by the respective Boards of Directors of this and said corporation or corporations; and in such event there shall be but a single publication of the regulations so adopted, for all the Companies so associated, which shall be for and in the name of the Pennsylvania Railroad Company, and in applying the said regulations to any other Company and its employes, it shall be understood that such Company, its Board of Directors, officers and employes, and the members of its Relief Fund, are referred to instead of the Pennsylvania Railroad Company, its directors, officers and employes and the members of its Relief Fund, as printed, excepting as to the number of members to be

chosen for the Advisory Committee, which shall be for each Company as shall be provided in the agreement relating thereto.

Such association shall be evidenced by agreement or agreements duly executed, authorizing, among other things, the constitution of a Joint Advisory Committee, to be chosen, as and in the manner therein prescribed, by the several parties thereto, and their employes, either by separate action in behalf of each of said parties, or by the united action of two or more of them as to any member or members of said Committee; the original committee to be constituted and vacancies occurring thereafter to be filled, in such manner as shall be prescribed.

In the event of any association as aforesaid, the functions and powers herein given to and vested in the Advisory Committee created as hereinbefore provided, shall, during the continuance of said agreement or agreements, be transferred to and vested in the Advisory Committee constituted as prescribed in said agreement or agreements, chosen as therein directed, and so much of the Organization and Regulations of the Relief Department herein provided for, as relates to the constitution of an Advisory Committee consisting solely of officers and employes of this Company, shall be suspended, with the understanding, however, that upon the determination of such agreement or agreements, the Advisory Committee herein provided for, constituted as herein pre-



scribed, shall reassume the functions and duties herein committed to it.

7. The Advisory Committee shall have general supervision of the operations of the Department, and see that they are conducted in accordance with the Regulations.

The Committee shall make by-laws for its government, not inconsistent with these Regulations, and arrange for the methods of choosing its members by contributing employes.

The Committee shall hold stated meetings once in three months, at such time and place as they shall determine, and shall meet at other times at the call of the General Manager as Chairman.

It shall be the duty of the Chairman to call special meetings of the Committee upon the written request of three of its members.

8. The Superintendent shall have general charge of all the business pertaining to the Department and prescribe the forms and blanks to be used and the reports to be made to the Department.

He shall certify to the correctness of all bills, and check-rolls for employes, of the Department, and send them to the General Manager for approval.

He shall employ, with the approval of the General Manager, such persons as may be necessary for the proper conduct of the business of the Department.

He shall furnish to the Advisory Committee such reports as they may require.

He shall be aided by an Assistant Superintendent who shall, in the absence of, or when specially directed by, the Superintendent, act for him, and the fact of such action in any case shall be prima facie evidence of his authorization so to act.

9. Medical Examiners shall be employed, who, under the direction of the Superintendent of the Relief Department, shall be stationed as may be from time to time arranged. One shall be Chief Medical Examiner and act as the adviser of the Superintendent with respect to medical matters, and perform such duties as may be assigned him.

Medical Examiners shall make the required physical examinations and prepare applications; ascertain and report upon the condition of members reported sick or injured, and decide as to the character of their disablements and their fitness for duty; prepare claims for benefits; and perform such other duties as may be required of them by the Superintendent of the Relief Department. The Medical Examiners shall not personally give surgical or medical attendance excepting in emergencies, and shall not accept fees for such attendance.

10. The moneys received for the Relief Fund shall be held by the Company in trust for the Relief Department. The Advisory Committee shall direct the investment, and any changes therein, of money which is not required to be kept on hand for current use.



The Company being the Trustee and Guarantor of the Fund, the investments shall be in such securities as shall have been approved by the Board of Directors, and shall be in the name of the Company, "in trust for the Relief Department."

On January 1st, 1904, all moneys to the credit of the first five triennial periods, known as the Relief Fund Liability Account, shall be transferred to a fund known as the Superannuation Fund, and liabilities incurred in those periods in addition to those of the sixth triennial period shall be paid out of the balance to the credit of the sixth triennial period; and it is also provided that at the end of each successive period of three years, all moneys to the credit of the Relief Fund Liability Account shall be placed in the Superannuation Fund as above, and all liabilities incurred shall be paid out of the balance to the credit of the next period, provided that if the amount contributed by the members of the Fund and received from other sources, during any one of the triennial periods prior to January 1st, 1904, or any one of the successive periods of three years thereafter, should not be sufficient to meet the liabilities incurred for such period, the Company will pay the deficiency. The interest on the Relief Fund Surplus shall also be placed in the Superannuation Fund.

Should the Superannuation Fund be insufficient to meet the payment of the allowances authorized

by the Regulations, the Company will pay the deficiency up to but not beyond January 1st, 1907. If there should be a balance to the credit of this fund on January 1st, 1907, or at the end of any three-year period thereafter, such balance shall be transferred to the Relief Fund Surplus.

**11.** The fiscal year of the Relief Department shall begin with the first day of January of each year.

**12.** The condition of the Relief Fund at the close of each fiscal year shall be audited and reported on by a competent person or persons, selected for that purpose by those members of the Advisory Committee who are chosen to represent the members of the Relief Fund.

**13.** Amendments to the Regulations of the Relief Department may be proposed by the Advisory Committee, but such shall not be operative unless presented at a stated meeting of the Committee, and considered and adopted at a subsequent stated or special meeting by a majority of the whole Committee and approved by the Board of Directors. Amendments so approved shall be duly announced by the Chairman of the Advisory Committee, and shall be binding upon the Company and the members of the Relief Fund from the dates fixed in the resolutions approving the same.

#### MEMBERSHIP.

**14.** Those who, under the Regulations, become contributors to the Relief Fund with the right of



participating in its benefits, must be employes of the Company, and shall be known as "Members of the Relief Fund."

15. In referring to the employes of the Company, the expressions "service" and "in the service," will refer to employment upon or in connection with, any of the railroads or works the employes of which shall be admitted to membership in this Relief Fund, or in either of those associated in administration therewith, and the service of any employe shall be considered as "continuous" from the date from which he has been continuously employed, without interruption, upon or in connection with, either of such railroads or works, or two or more of them successively.

16. There shall be five classes in which employes may become members, to be determined by their regular monthly pay or usual earnings in a month, as follows:—

1st Class—Those at any rate of pay.

2d Class—Those receiving thirty-five dollars or more.

3d Class—Those receiving fifty-five dollars or more.

4th Class—Those receiving seventy-five dollars or more.

5th Class—Those receiving ninety-five dollars or more.

Unless the usual amount of earnings in a month can be otherwise ascertained it will be determined by multiplying the usual earnings per day by twenty-six.

For persons in the service of two or more of the Companies associated in the administration of their Relief Departments, the class shall be

determined by the total pay received from all such Companies, and the membership shall be in the Fund of the Company from which the largest amount is received.

In cases of doubt as to the proper classification, the Superintendent of the Relief Department shall decide.

17. No employe will be required to become a member of the Relief Fund.

Any employe not over forty-five years of age may, upon passing a satisfactory physical examination, become a member in the class which his pay entitles him to enter or any lower class.

Any employe, who shall have been transferred from the service of any of the Companies associated in the joint administration of the Voluntary Relief Department of the Pennsylvania Lines West of Pittsburgh and shall at the time of such transfer be a member of the Relief Fund of any of the Companies associated in the joint administration of the Voluntary Relief Department of the Pennsylvania Lines West of Pittsburgh, may, regardless of age or physical condition, and upon making the necessary application, become a member of the Relief Fund of the Company to the service of which he may be transferred, in the class and for the additional death benefits, at the same rates, for which he shall have been contributing at the time such transfer is made; provided, that such application is made within thirty days from the time of such transfer to the service of the Company,



the Relief Fund of which he desires to become a member.

Any member may, upon passing a satisfactory physical examination, change to a class higher than that in which he is contributing, if not higher than that determined by his pay, or, without such examination, to any lower class.

Any member not over forty-five years of age, who shall have been continuously in the service for five years, and a member of the Relief Fund for one year, both immediately prior to his supplementary application, may enter any class higher than that determined by his pay upon passing a satisfactory physical examination.

Statements made to Medical Examiners by applicants respecting their physical condition, in connection with applications for membership, higher class or additional death benefit, and attached thereto, shall form a part of the same.

For an applicant not a minor the age shall be taken as that at nearest birthday.

**18.** Any employe at the time of entering any class as a member of the Relief Fund, or thereafter may, upon passing a satisfactory physical examination, take one or more additional death benefits of the first class to such extent that the whole amount of additional death benefit for which he shall at any time contribute shall not exceed the amount of the death benefit of the class in which he shall at the time be a member. Under this a member in the first class may take one additional death benefit of the first class; in

the second class, two or less; in the third class, three or less; in the fourth class, four or less; and in the fifth class, five or less. If a member shall at any time enter a lower class he shall not be entitled to retain additional death benefit of an amount greater than the death benefit of such lower class.

A member may, on application, relinquish any of the additional death benefits for which he is contributing.

Physical examination shall not be required on application for reduction of additional death benefit, nor for additional death benefit in connection with reduction in class if the whole death benefit is not thereby increased.

**19.** Any member may withdraw from the Relief Fund at the end of any month on giving notice on or before the twenty-fifth day of such month on the prescribed form, which can be obtained from the person under whom he is directly employed. The obligations and rights in connection with the Fund, of members giving such notice, shall cease at the close of the month in which the notice is given, and no contribution shall be made by any such withdrawing member for the succeeding month.

**20.** In indicating the relations to the Company's service of employes relieved of employment and pay therein, the following terms shall be used:—

“Left Service” for those who have resigned, or have been relieved or discharged;



"Furloughed" for those temporarily relieved without fault on their part;

"Suspended" for those temporarily relieved as a penalty for offences;

"Retired" for those retired from active service, with Superannuation allowance.

**21.** Membership may be retained during absence from duty by reason of furlough or suspension, for a period not longer than nine months, under the following conditions:—

Membership shall cease unless the member shall return to duty at or before the expiration of such period or upon recovery from disability then existing.

After the usual contribution immediately prior to such absence, further contribution for time during such absence shall be optional with the member. If he shall have omitted to contribute at any time during such absence, any subsequent contribution shall commence with the date of payment or such later date as the member shall designate, but not later than the first day of the following month, and shall be paid to the end of the month to which it applies, but contribution during such absence shall not be accepted for any time beyond the period of nine months aforesaid.

Contribution for any portion of the period of such absence shall not be received from a member at the time disabled, or if received shall be returned.

There shall be no title to benefits on account of disability commencing during such absence, in time not contributed for in advance, nor for death during such time or in connection with such disability. Such disability, or any disability terminating before the expiration of the aforesaid period of nine months, shall not operate to extend the period during which membership may be retained during absence as herein provided.

Return to duty shall be held to be at the expiration of the above-named period if it shall be on the first day after such period, or on the day following if the member cannot return to duty on such first day on account of its being a Sunday or legal holiday.

#### APPLICATIONS.

**22.** Participation in the benefits of the Relief Fund must be based upon an application by the proposed member, in the form prescribed in Regulation No. 23, approved by the Superintendent of the Relief Department, and upon a certificate of membership issued by him to the applicant.

**23.** Applications for membership shall be in the following form:—

#### PENNSYLVANIA RAILROAD COMPANY. RELIEF DEPARTMENT.

#### APPLICATION FOR MEMBERSHIP IN THE RELIEF FUND.

*To the Superintendent of the Relief Department:*

I, \_\_\_\_\_ of \_\_\_\_\_, in the county  
of \_\_\_\_\_ and State of \_\_\_\_\_  
employed in the service of the Pennsylvania Railroad Company, as  
upon the \_\_\_\_\_ Department,  
do hereby, by reason of such employment, apply for membership in the



Relief Fund, and consent and agree to be bound by the Regulations of the Relief Department of the said Company, as contained in the book of said Regulations, approved by the Board of Directors, which I have read or have had read to me, and by any other regulations of the said Department hereafter adopted, and by the provisions of any agreement or agreements made by the said Company with any other corporation or corporations associating in administration of their respective Relief Departments, in accordance with said book of Regulations.

*I also agree*, That the said Company, by its proper agents, and in the manner provided in said Regulations, shall apply as a voluntary contribution from any wages earned by me under said employment, or from benefits that may hereafter become payable to me, at the rate of per month, for the purpose of securing the benefits provided for in the Regulations for a member of the Relief Fund of the class, and additional death benefit, equal to the death benefit of the first class. Unless I shall otherwise designate in writing, with the approval of the Superintendent of the Relief Department, death benefit shall be payable to

[Here designate the beneficiary or beneficiaries.]

And if any person now or hereafter designated by me to receive the death benefit shall not be living or shall be incapacitated for executing the requisite receipt and release, or if there shall be no such person, the death benefit shall be payable as provided in the Regulations of the Relief Department for such event. And I agree that the acceptance of benefits from the said Relief Fund for injury or death shall operate as a release of all claims for damages against said Company, arising from such injury or death, which could be made by or through me, and that I or my legal representatives will execute such further instrument as may be necessary formally to evidence such acquittance.

*I also agree*, That this application, when approved by the Superintendent of the Relief Department, shall make me a member of the Relief Fund on and from the date upon which by the provisions of the Regulations and the terms of this application, it takes effect, and shall constitute a contract between myself and the said Company, and that the terms of this application and the Regulations of said Department shall, during my membership, be a part of the conditions of my employment by the Company, and that the same shall not be avoided by any change in the character of my service, or locality where rendered, while in such employment, nor by any change in the amounts applicable from my wages to the Relief Fund, which I may hereafter consent to, and that the agreement that the above-named amounts shall be appropriated from my wages shall apply also to any other amounts arising from changes made as aforesaid and shall constitute an appropriation and assignment in advance, to the said Company in trust, for the purposes of the Relief Fund, of such portions of my wages, which assignment shall have precedence over any other assign-

ment by me of my wages, or of any claim upon them on account of liabilities incurred by me.

*I also agree*, for myself, and those claiming through me, to be especially bound by Regulation numbered 65, providing for final and conclusive settlement of all disputes, by reference to the Superintendent of the Relief Department and an appeal from his decision to the Advisory Committee.

*I certify*, That I am correct and temperate in my habits; that so far as I am aware I have no injury or disease, constitutional or otherwise, which will tend to shorten my life, and am now in good health and able to earn a livelihood.

*I also agree*, That any untrue or fraudulent statement made by me to the Medical Examiner, or any concealment of facts in this application, or resignation from the service of the said Company or my being relieved from employment and pay therein at the pleasure of the Company or its proper officers, shall forfeit my membership in the aforesaid Relief Fund and all benefits, rights or equities arising therefrom, excepting that my leaving the service shall not (in the absence of any of the other foregoing causes of forfeiture) deprive me of any benefits to the payment of which I shall have previously become entitled by reason of accident or sickness occurring while in the service.

This application to take effect the day of , A. D. , if I shall be on duty on that date; otherwise upon the date of my going on duty thereafter.

*In Witness Whereof*, I have signed these presents at in the county of State of this day of A. D.

*Witness:* (Signature.)

The foregoing application is approved at the office of the Superintendent of the Relief Department at in the county of State of this day of A. D. (Signature.)

*Superintendent of the Relief Department.*

The last application which shall have been made by any one in the foregoing form, or in the corresponding form prior to any modifications since adopted, shall be known as his principal application.

The following form of supplementary application shall be used for members applying to enter higher or lower classes, or for additional death benefit or reduction therein.



## PENNSYLVANIA RAILROAD COMPANY.

## RELIEF DEPARTMENT.

## SUPPLEMENTARY APPLICATION.

To the Superintendent of the Relief Department:

I, \_\_\_\_\_ of \_\_\_\_\_ in the  
county of \_\_\_\_\_, State of \_\_\_\_\_  
an employe in the service of the Pennsylvania Railroad Company and a  
member of the Relief Fund thereof, by virtue of my former principal  
application under and subject to the conditions recited in said principal  
application and upon the terms thereof, unless, and only so far as,  
herein modified, do hereby make this supplementary application for the  
following, namely:—

[Here specify character of benefits applied for.]

This application to take effect the \_\_\_\_\_ day of \_\_\_\_\_, A. D.  
if I shall be on duty on that date; otherwise upon the date of my  
going on duty thereafter.

In Witness Whereof, I have signed these presents at  
in the county of \_\_\_\_\_ State of \_\_\_\_\_ this \_\_\_\_\_ day  
of \_\_\_\_\_ A. D. .

Witness: (Signature.)

The foregoing supplementary application is approved at the office of  
the Superintendent of the Relief Department at \_\_\_\_\_ in the  
county of \_\_\_\_\_ State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A. D. .

(Signature.)

Superintendent of the Relief Department.

**24.** When a member of the Relief Fund of either of the Companies which may be for the time being associated in the joint administration of their Relief Departments, shall be permanently transferred to the service of any other of those Companies, his membership shall by virtue thereof be transferred to the Relief Fund of such other Company, and his application and agreement as a member of the Relief Fund of the Company from whose service he is transferred shall thereupon become binding between such member and the Company to whose service he is transferred.

**25.** Immediately upon any one engaged in, or about to enter, the service of the Company, and

not over forty-five years of age, signifying a desire to become a member of the Relief Fund, or upon a member signifying a desire to take additional death benefit or to change his class or death benefit, notice of the same shall be sent from the proper employing officer in the manner required, to the Superintendent of the Relief Department, and to the proper Medical Examiner. The latter will as soon thereafter as possible make the necessary inquiries of the applicant, and physical examination, when such is required, complete the application, and forward it to the Superintendent of the Relief Department, who will advise the proper employing officer, and through him the applicant, of the approval or non-approval of the application.

Medical Examiners shall not make known to applicants or others the results of physical examinations, excepting as may be authorized.

**26.** Applications shall take effect on the dates specified therein, excepting as to persons not on duty in the service of the Company, in which cases they shall take effect at any subsequent dates upon which the applicants go on duty and are not at the time suffering from injury or disease.

If the specified date is a Sunday or legal holiday, on which the applicant is not on duty, the application shall nevertheless take effect on that date if by being on duty on the working days immediately before and after such date he shall be shown not to be disabled.



**27.** The date specified for an application to take effect shall be the date on which the request is made, unless the applicant, with such request, shall specify in writing a later date, which shall not be later than the first day of the next month.

**28.** An applicant may, in his principal application or subsequently in the prescribed form, designate a beneficiary or beneficiaries, who shall, upon the approval of the designation by the Superintendent of the Relief Department, be entitled to receive his death benefit; provided that good and sufficient reasons must be given for such designation of other than relatives or legal representatives.

**29.** Payment of benefit on account of death of a member shall be made in the following order:—

*First.* To the beneficiary or beneficiaries designated in the member's principal application, or subsequently in the prescribed form, whose designation shall have been approved by the Superintendent of the Relief Department, and, where there are more than one such beneficiary, in equal shares, unless otherwise specified.

*Second.* If there be no such designated beneficiary living at the member's death, then the whole benefit; or, if there be several designated beneficiaries, and one or more thereof shall be then dead and one or more be then living, then the share or shares of such whole benefit as the deceased beneficiary or beneficiaries would have been entitled to receive, if any, shall be paid to the wife (or husband) of the member.

*Third.* If there be no wife (or husband) of such member living at the member's death, then the whole benefit, or share or shares thereof, which such wife (or husband), if living, would have been entitled to receive, shall be paid to the child or children of the member, and the issue of any deceased child, in equal shares and proportions, the issue of such deceased child, however, to take only among them the share such deceased child would have taken if living; and said share shall be divided, distributed and paid to and among such issue, so as that they shall receive the same in the like shares and proportions as they would have been entitled to as heirs-at-law of such deceased child, according to the statute of distribution of the State wherein the deceased member was domiciled at the time of death, had such deceased child died seized and possessed of the same intestate.

*Fourth.* If there be no children of the member or the issue of such living, then the whole of such benefit, or the share which such children and issue would have taken had there been such, shall be paid to the father and mother of the member, jointly, or to the survivor of them.

*Fifth.* If there be no such person in existence as hereinbefore enumerated, the next of kin of the member shall be entitled to such benefit, in accordance with the statute of distribution of personal estates of the State wherein said member was domiciled at the time of death, and payment thereof shall be made to the executor or



administrator of the deceased member, in trust, nevertheless, solely for the benefit of, and distribution among, such next of kin accordingly.

*Sixth.* If there be no kindred of the member living at such member's death, the benefit shall lapse, and the amount thereof shall remain as part of the Relief Fund; but so much thereof as may be requisite for the necessary funeral expenses and proper expenses incident to the disability and death of the member shall, in such case, be paid from the Relief Fund. But in any case in which notice in writing of the existence of such kindred shall not be served on the Superintendent of the Relief Department within twelve months after such member's death, it shall be treated as conclusive that there are no such kindred in existence, and thereupon the said benefit shall be treated as absolutely lapsed and extinguished, and dealt with accordingly.

The designation of a person to receive the death benefit in trust for a minor child shall be presumed to last only during minority, unless otherwise provided in the designation.

**30.** Unless otherwise directed by the Superintendent of the Relief Department, an application of a married woman must be signed also by her husband, and that of a minor by the father or other legal guardian.

#### CONTRIBUTIONS.

**31.** The word "contribution," wherever used herein, shall be held to mean such portion of wages

or benefits, or cash payments in lieu thereof, as a member shall have agreed in his application shall be applied for the purpose of securing to him the right to benefits from the Relief Fund, and the words "contributors," "contributing employes" and like words and phrases are descriptive of employes so contributing.

**32.** Contributions shall be made monthly in advance, at the following rates. For the first class, seventy-five cents per month; for the second class, twice as much (\$1.50); for the third class, three times as much (\$2.25); for the fourth class, four times as much (\$3.00); and for the fifth class, five times as much as for the first (\$3.75).

**33.** Contribution to be collected or refunded for part of a month shall be one-thirtieth part of the rate per month, for each day, adding to make even cents where fractions occur. For such contribution to be collected the time shall begin with the date upon which an application takes effect or contribution for other reason begins, and shall extend to the end of the month. Contribution to be refunded shall be for the time, after and including the last day of service, for which contribution has been made.

**34.** The rates per month of contributions for death benefit only, additional to the death benefit of a member's class, shall be determined by the age of the member at the time of taking the additional death benefit, as follows:—

For each additional death benefit of the first



class, for a member not over forty-five years of age, thirty cents; over forty-five and not over sixty years of age, forty-five cents; and over sixty years of age, sixty cents. If a member having additional death benefit shall increase the amount when his age requires a higher rate than he before contributed, the higher rate shall apply only to the increase.

**35.** Contribution for a whole month shall be payable before the first day of such month. It will ordinarily be deducted from the member's wages on the pay-roll of the preceding month and placed to his account in the Relief Fund.

If a member on duty becomes entitled to benefits before opportunity to earn wages to pay his full contribution, the amount payable shall be deducted from benefits, unless otherwise paid. When, in other cases, wages earned are not enough to pay the full contribution which should be deducted therefrom, the deficiency must be paid in cash, unless wages from which it may be deducted are earned in time.

When, through error in computation, a contribution is not the correct amount for the period for which it is payable or to which it is intended to apply, any deficiency shall be deducted from wages or benefits, or otherwise paid, and any excess shall apply to so many full days of time succeeding such period as it will cover.

Contribution shall not be received for past time during which a member would not have been en-

titled to benefits by reason of failure to contribute in advance, nor from a member suffering from disability commencing in such time, and any such contribution paid shall be returned.

Upon change of class or death benefit, contribution shall be at the old rate for time prior to date of change and at the new rate from such date inclusive.

**36.** When an application is to take effect upon the first day of a month, the contribution for that month shall be made on the roll of the preceding month, if practicable. Otherwise the contribution for a month or any unexpired part of a month in which an application takes effect, or for which a member should contribute who goes on duty after absence, shall be made on the roll of that month, together with the contribution for the next month.

**37.** A member who earns no wages in a month, from which his contribution may be made for the next month, shall not be entitled to benefits on account of disablement or death occurring in the next month, nor for death following such disablement, unless he shall have earned wages in such month from which his contribution may be deducted, or shall have otherwise made the proper contribution in advance for the time in which the disablement or death occurs.

**38.** When a member is disabled or dies in the month in which his application takes effect, his contribution for that month will be deducted from the wages earned therein or from the



benefits payable if the wages are not sufficient, and the amount of contribution shall be for the unexpired part of the month, commencing with the date upon which the application takes effect.

**39.** A member shall not make contribution for any time after the month in which the disability begins, when such disability is properly established, except when wages are paid for time during disability, in which case contribution shall be made for such time, and for intervening Sundays and legal holidays.

**40.** No contribution shall be deducted from the final payment of wages to a member leaving the service, excepting for contributions in arrears. When a member leaves the service who is not at the time suffering from disability which entitles him to benefits, there shall be returned to him so much of his last contribution as covers the part of the month succeeding and including the date on which he leaves the service, for which he must give a receipt in the prescribed form.

Should a member, who is disabled and entitled to benefits when leaving the service, recover from the disability in the same month, he shall not be entitled to benefits for a subsequent disability or death, and shall be entitled to the return of so much of his contribution as covers time subsequent to such recovery.

**41.** No part of the contribution of a member for a month in which he dies shall be refunded.

## BENEFITS.

**42.** Members shall be entitled, upon the conditions prescribed in the Regulations, and commencing with membership, to the following benefits:—

**ACCIDENT.**—Payments while disabled by accident in the Company's service, for each day during a period not longer than fifty-two weeks, at the rate of fifty cents per day for a member of the first class, and of greater amounts for members of the other classes, in proportion to their contributions; and at half these rates after fifty-two weeks and during the continuance of the disability.

**SICKNESS.**—Payments while disabled by sickness or by injury other than accident in the Company's service, for each day after the first three days of such disability, and for a period not longer than fifty-two weeks, at the rate of forty cents per day for a member of the first class, and of greater amounts for the other classes, in proportion to their contributions for such classes, and after fifty-two weeks at half the foregoing rates.

**DEATH.**—A payment, on the death of a member from accident or other cause, occurring during time for which he shall have contributed, or while receiving disablement benefits, or during a month in which he shall have recovered from disability, of two hundred and fifty dollars for a member of the first class, and of greater amounts for the other classes, in proportion to their contributions.

**SURGICAL ATTENDANCE.**—Provision for neces-

sary surgical attendance during disability from accident occurring to members while in the discharge of duty as employees of the Company.

PERIODS OF DISABLEMENT.—In ascertaining the periods for which disablement benefits may be paid, successive periods of disability from accident in the service shall be counted together if arising from the same accident, and separately if from different accidents. Successive periods of disability from sickness shall be counted together, with the three days deduction from the first only, if they are separated by an interval of less than thirteen weeks, and separately with the three days deduction from each, if the interval is thirteen weeks or more. In determining the length of intervals between periods of disability from sickness any part of the same during which disability from accident exists, shall be excluded.

If a member, after receiving for fifty-two weeks the payments herein provided for disability from sickness, whether continuously or in several periods, not separated by intervals of more than thirteen weeks, shall be declared by the Medical Examiner able to return to duty, he shall resume full contribution, and shall be entitled to payments for disability from accident occurring thereafter in the Company's service, and to payments for disability from sickness occurring after he shall have been continuously engaged in the performance of duty with full contribution for a period of thirteen weeks, or if again disabled by sickness within thirteen



weeks, after receiving benefits for fifty-two weeks as aforesaid, he shall be entitled to payments for sickness benefits at half the rate provided for his class. Such member, and all members while receiving sickness benefits at half the rate of their class, shall retain title to death benefit and shall contribute therefor as follows: for each death benefit of the first class to which the member's class entitles him at the rate for additional death benefit applicable to the age at which he entered the class in which he last contributed, and for his additional death benefit at the rate he last contributed for the same, and the conditions in such case as to contribution and title to death benefit as thereby affected, shall be the same as those applicable in case of furlough.

**SUPERANNUATION.**—A member who, under regulations adopted by the Company, shall be retired from active service with the Company, by reason of age or physical condition, shall be entitled to Superannuation allowance, provided, however, that he shall not be entitled to receive such allowance for any period for which he may receive wages from the Company, and provided, further, that he shall have relinquished title to disablement benefits, and that acceptance of any Superannuation allowance shall constitute a relinquishment of right or title to such benefits.

The Superannuation allowance of a member shall be determined by multiplying the number of each class in which he shall have been a member by the number of full calendar months

in each class respectively. The sum of the results thus obtained shall be the rate in cents of monthly allowance, provided that, should the fund devoted by these Regulations to the payment of Superannuation allowances—together with any voluntary contributions especially made to said purpose—be inadequate, during any annual or semi-annual period, to meet the demands for such allowances as hereinbefore prescribed, then a pro rata reduction shall be made in such allowances for each such period.

A member receiving such allowance may retain title to death benefits by contributing therefor at the rates prescribed for title to death benefits retained after fifty-two weeks benefits for sickness.

**43.** The following table exhibits the rates of monthly pay admitting to the several classes and the rates of contributions and benefits:—

	1st Class.	2d Class.	3d Class.	4th Class.	5th Class.
Monthly pay.....	Any Rate.	\$35 or more.	\$55 or more.	\$75 or more.	\$95 or more.
Contribution per month:—					
Class.....	\$0 75	\$1 50	\$2 25	\$3 00	\$3 75
Additional Death Benefit, equal to Death Benefits of class:—					
Taken at not over 45 years of age.....	30	60	90	1 20	1 50
Taken at over 45 years and not over 60 years of age....	45	90	1 35	1 80	2 25
Taken at over 60 years of age.....	60	1 20	1 80	2 40	3 00
Disablement Benefits per day, including Sundays and holidays:—					
Accident.					
First fifty-two weeks.....	50	1 00	1 50	2 00	2 50
After fifty-two weeks.....	25	50	75	1 00	1 25
Sickness.					
After first three days, and not longer than fifty-two weeks.....	40	80	1 20	1 60	2 00
After fifty-two weeks....	20	40	60	80	1 00
Death Benefits:—					
For class.....	250 00	500 00	750 00	1000 00	1250 00
Additional that may be taken.....	250 00	500 00	750 00	1000 00	1250 00

**44.** Benefits and other claims upon the Relief Fund shall be paid out in conformity with the financial methods of the Company, and on orders of or bills prepared by the Superintendent of the Relief Department, or such other persons as may be designated by the General Manager.

**45.** Payments of benefits on account of disablement by accident shall only be made upon the disablement being shown to have resulted solely from accidents occurring to members during and in direct and proper connection with the performance of duty in the service of the Company, to which they are assigned, or which they are directed to perform, by proper authority, or in voluntarily protecting the Company's property or interests, or from accidents occurring to members at points upon the Company's property which they are under the necessity of passing when going to or from work, and when so passing and which result from causes of a nature peculiar to such points and wherein the persons injured do not voluntarily or unnecessarily expose themselves to danger, and there must be a clear and well-established history of the cause and circumstances of injury accidentally inflicted and sufficient to produce the alleged injury, with exterior or other positive evidence of such injury, and satisfactory evidence that it renders the person unable to perform his duty in the service.

If the injury is of a permanent character benefits will cease when the member shall be



declared by the Medical Examiner as able to earn a livelihood in an employment suited to his capacity.

Disablement from accident occurring otherwise than as aforesaid, including such as may arise at any time from acts or things having no proper relation to the performance of duty, or from individual physical condition or tendency, shall be classed as sickness, and if of a permanent character benefits will cease when the member shall be declared by the Medical Examiner as able to earn a livelihood in an employment suited to his capacity.

**46.** If a member, who has recovered from disability from accident in the Company's service, shall continue disabled from sickness, the time for which benefits are payable shall not be affected by the preceding period of disability from accident.

Benefits shall not be payable for both accident and sickness for the same time.

**47.** If a member of the Relief Fund shall die during disablement from accident or sickness, the death benefit which may be payable shall not be subject to deduction of previous payments of disablement benefits.

**48.** A member on duty in the service and earning wages, or having wages payable, from which his contribution may be deducted, shall be entitled to benefits in the event of disablement or death during the time intervening between the

close of a month and payment of his wages earned therein, and also from the date his application takes effect, and from any date upon which, after absence, he returns to duty in a month for which he has not contributed, notwithstanding the fact that his contribution shall not be actually made until the payment of wages from which it is to be deducted. If by reason of disablement or death, or otherwise, he shall be prevented from earning wages enough to pay his contribution, the deficiency shall be otherwise paid. Failure, through error, to deduct a contribution or any part thereof from wages on the roll, shall not debar a member or his beneficiary from the receipt of benefits that would otherwise be payable, but such contribution shall be subsequently deducted on the roll or otherwise paid.

**49.** An applicant for membership or higher class or additional death benefit, who shall be entitled to the same on condition of passing a satisfactory physical examination, shall make full contribution from the date the application is to take effect, and shall, prior to such examination, possess the rights and be subject to the obligations of membership under the application, as respects accident in the service of the Company occurring after the application is to take effect. If there are no circumstances preventing the approval of the application he shall from the time of passing a satisfactory physical examination be entitled to



membership under the application as respects all the benefits applied for.

The time of passing a physical examination shall be the date of the examination by the Medical Examiner.

When an application is not approved, or the applicant shall have refused to be examined, contribution made on account of the application shall be returned, excepting so much as shall be for time prior to and including the date of recovery from disability from accident in the service, for which benefits shall have become payable or for a month in which death shall occur from such accident.

**50.** Benefits will not be payable for death or disablement occurring to a member in a foreign country or other place so distant or difficult of access that the Medical Examiner cannot be expected to visit him, unless such death or disablement is promptly reported and satisfactory evidence thereof is furnished, authenticated by consuls or other public officials, or otherwise as may be required.

A member who proposes, while disabled, to go away from his usual place of residence, must first arrange with the Medical Examiner with respect to the proposed absence and the character and frequency of the evidence of continued disability to be furnished, and must keep him advised of his address, and report as may be required to him or to any other Medical Examiner to whom he may be transferred.

**51.** Members shall not be entitled to receive disablement benefits for time for which wages are paid them by the Company. In computing benefits, the time of disability shall be taken as commencing upon the first day upon which, because of the disability, a full day's wages are not paid, and shall not include any subsequent day for which a half day's wages or more are paid.

**52.** Benefits shall not be payable for disability from sickness or injuries arising in consequence of intoxication or while intoxicated, or resulting from or prolonged by immoral practices, or the use of stimulants or narcotics, or occurring by reason of incapacity for self-protection arising from such use; or from voluntary self-injury, or while engaged in unlawful acts or in consequence thereof, or from venereal disease.

**53.** Benefits on account of continued disability will be paid monthly, and for short periods when the amounts are ascertained.

**54.** Claims for death benefits will be payable within thirty days after the required evidence is furnished of their validity.

A part of a death benefit may be paid before the final settlement, to meet funeral or other urgent expenses incident to the death and preceding disability of a member, to be deducted from the total amount upon final payment; provided that any such payment, without the written authority of the persons to whom the death benefit is payable, shall not exceed one-half the death benefit nor in any case



the sum of two hundred dollars. If any of the persons to whom the death benefit is payable are incompetent to give such authority, or cannot be found, or are in a foreign country, or for other reasons cannot be conveniently communicated with, or there are no such persons living, the Superintendent of the Relief Department may make such payments, as a part of the death benefit, as in his judgment may be reasonable, for the proper burial of the deceased member and the payment of expenses necessarily incident to his death and disability immediately preceding. .

**55.** Benefits payable on account of disability shall be payable only to the disabled member, or to a parent, guardian or trustee entitled to receive and receipt for wages of such member or to act for him.

Such benefits payable to a member unable to execute a proper receipt may be paid to a relative or other proper person, selected by the Superintendent of the Relief Department, to use for the benefit of the member, and the receipt of such person shall be a sufficient discharge.

Disablement benefits remaining unpaid at the death of a member shall be payable to the person or persons entitled to receive the death benefit, and in like proportion.

**56.** In order that disabled members may have the full benefit of being promptly and frequently seen by the Medical Examiners, it shall be their duty, when their condition and location do not prevent, to call on the Medical Examiners as soon

as practicable after disablement occurs, and at such times thereafter as the Medical Examiners may deem necessary.

Disabled members shall not be entitled to benefits, if they shall decline to permit the Medical Examiners to ascertain their condition, or shall fail to give proper information respecting it, or shall prevent the necessary examination by absenting themselves from home without arranging with the Medical Examiners or giving satisfactory reasons for not doing so, and furnishing the necessary evidence, or shall fail to comply with notice to meet the Medical Examiners at their offices or elsewhere, when their condition and location permit of their doing so.

#### MISCELLANEOUS.

**57.** Orders issued by the Relief Department for the payment of disablement benefits will be payable by the Treasurer or the designated depositories of the Company, and Freight and Passenger Agents will cash such orders when properly signed and witnessed, when the funds of the Company in their hands will permit.

For contributions returned, receipts must be taken in the prescribed form and sent to the Superintendent of the Relief Department, who shall reimburse the officers paying them.

Death benefits will be paid by vouchers, which will be cashed by the Treasurer or designated depositories of the Company.



58. Should a member or his legal representative make claim, or bring suit, against the Company, or against any other corporation which may be at the time associated therewith in administration of the Relief Departments, in accordance with the terms set forth in Regulation No. 6, for damages on account of injury or death of such member, payment of benefits from the Relief Fund on account of the same, shall not be made, until such claim shall be withdrawn or suit discontinued. Any compromise of such claim or suit, or judgment in such suit, shall preclude any claim upon the Relief Fund for benefits on account of such injury or death, and the acceptance of benefits from the Relief Fund by a member or his beneficiary or beneficiaries, on account of injury or death, shall operate as a release and satisfaction of all claims against the Company and any and all of the corporations associated therewith in the administration of their Relief Departments, for damages arising from such injury or death.

59. The Superintendent of the Relief Department and the Medical Examiners are to be informed at once, in the manner provided, of accidents or sickness occurring to members.

60. Members who shall be absent from duty on account of sickness or injury must at once notify the persons who keep the record of their time, and they will not be entitled to benefits for time previous to such notice, unless the delay shall be shown to have been unavoidable and satisfactory evidence of disability is furnished.

**61.** Members must keep their foremen or time-keepers informed of their addresses and of any changes of the same.

**62.** The responsibility of the Relief Department to any member, and his membership, shall end when he ceases to be employed by the Company, voluntarily or otherwise, excepting as to rights and obligations on account of disability from accident or sickness occurring and reported while in the service and death directly due to such accident or sickness and occurring during the disability arising therefrom, and as to such return of contribution as the member may be entitled to, and as to Superannuation allowance and the conditions relating thereto.

**63.** When a member leaves the service without Superannuation allowance he must surrender his Certificate of Membership to the person from whom he receives his final payment of wages.

The possession of a Certificate of Membership in the name of a person whose membership or service with the Company has ceased, shall not be evidence of title to benefits.

**64.** The office of the Superintendent of the Relief Department, with the records thereof, shall be located at such point as shall from time to time be designated by the General Manager, either upon the lines of railroad owned or operated by the Company, or upon lines of railroad owned or operated by any Company with which it may become associated in the administration of the Relief Department.



**65.** All questions or controversies of whatsoever character arising in any manner, or between any parties or persons in connection with the Relief Department, or the operation thereof, whether as to the construction of language or meaning of the Regulations of the Relief Department, or as to any writing, decision, instruction or acts in connection therewith, shall be submitted to the determination of the Superintendent of the Relief Department, whose decision shall be final and conclusive thereof, subject to the right of appeal to the Advisory Committee within thirty days after notice to the parties interested, of the decision.

When an appeal is taken to the Advisory Committee it shall be heard by said Committee without further notice at their next stated meeting, or at such future meeting or time as they may designate, upon evidence and argument submitted in writing, and shall be determined by vote of the majority of a quorum, or of any other number not less than a quorum of the members present at such meeting, and the decision arrived at thereon by the Advisory Committee shall be final and conclusive upon all parties without exception or appeal.

## INDEX.

Absence preventing physical examination, . . . . .	56
Accident benefits, . . . . .	42, 45
" before application is approved, . . . . .	49
Additional death benefit, . . . . .	18
Addresses, members inform timekeepers of, . . . . .	61
Advisory Committee, how constituted, &c., pp. 14-18; Reg. 6, 7	
" " proposed amendments, . . . . .	13
" " decision final, . . . . .	65
Age affecting membership, . . . . .	17
Agreement for joint administration, . . . . .	p. 3
Amendments, how made, . . . . .	13
Appeal to Advisory Committee, . . . . .	65
Applications, . . . . .	23, 25
" basis of membership, . . . . .	22
" when to take effect, . . . . .	26
" to be approved by Supt. of Dept., . . . . .	22
" may be dated in next month, . . . . .	27
Assistant Superintendent, duties of, . . . . .	8
Audit Fund annually, . . . . .	12
Beneficiary, other than relatives, . . . . .	28
" entitled to death benefits, . . . . .	29
Benefits, . . . . .	42, 43
" title to, during furlough or suspension, . . . . .	21
" when payable, without contribution, . . . . .	48
" effect on, when no wages earned, . . . . .	37
" for disablement, to whom payable, . . . . .	55
" before application is approved, . . . . .	49
" not payable while receiving Superannuation al- lowance, . . . . .	42
" not payable if suit is brought, . . . . .	58
" not payable for time covered by wages, . . . . .	51
" not paid in case of intoxication, &c., . . . . .	52
" how and when payable, . . . . .	44, 53, 54, 57
" computing time for, . . . . .	51
" unpaid at death, how payable, . . . . .	55
Certificates of membership, to be issued, . . . . .	22
" " " surrender on leaving service, . . . . .	63
Classification of members, . . . . .	16
Company manage Department and guarantee obligations, 5, 10	
Contributions, . . . . .	32, 43
" defined, . . . . .	31
" for part of month, . . . . .	33, 38
" for death benefit only, . . . . .	34, 42
" when and how payable, . . . . .	32, 35
" repayment on leaving service, . . . . .	33, 40



Contributions, when no wages earned, . . . . .	37
" for remainder of month after recovery, . . . . .	36
" not made by disabled member, . . . . .	39
" none from final payment of wages, . . . . .	40
" return when application not approved, . . . . .	49
" returned, receipts to be taken, . . . . .	40, 57
" not refunded at death, . . . . .	41
" for month in which application takes effect, . . . . .	36
" when disability or death is in month application takes effect, . . . . .	38
" when wages paid during disability, . . . . .	39
Death benefits paid by voucher, . . . . .	57
" additional, . . . . .	18
" not subject to deduction, . . . . .	47
" members receiving Superannuation allowance may retain, . . . . .	42
Disabled members must give notice, . . . . .	60
Declining physical examination, . . . . .	56
Disablement or death in month application takes effect, . . . . .	38
Expenses paid by Company, . . . . .	5
Employes' relations to service, terms indicating, . . . . .	20
Furlough, membership kept up during, . . . . .	21
Fiscal year of Department, . . . . .	11
Fraudulent statements, forfeit rights, . . . . .	23
Funeral expenses, payment of, . . . . .	29, 54
Income from investments added to Fund, . . . . .	4
Investments, how made, . . . . .	10
Joint administration, method of, . . . . .	p. 3
Leaving service, responsibility to member ceases, . . . . .	62
Married woman, husband signs application, . . . . .	30
Medical Examiners, . . . . .	9
" " to be notified of disablement, . . . . .	59
" " to be notified of applications, . . . . .	25
Membership, terms of, . . . . .	14, 16, 17
Minor, father signs application, . . . . .	30
Physical examinations, if declined, benefits not paid, . . . . .	56
Service, meaning of, . . . . .	15
Sick disability after accident, . . . . .	46
Suit cancels claim on Fund, . . . . .	58
Superannuation, . . . . .	42
" allowance, how determined, . . . . .	42
" Fund, how created, . . . . .	10
Superintendent, duties of, . . . . .	6, 8, 65
Surplus, interest thereon to be used for payment of Superannuation allowances, . . . . .	10
Surgical attendance, provided for, . . . . .	42
Suspension, membership during, . . . . .	21
Transfer of membership, . . . . .	pp. 9-11; Reg. 17, 24
Withdrawal from membership, . . . . .	19







121 And thereupon the defendant by its counsel further to maintain the issues upon its part joined, in addition to the foregoing offered to prove by the witness upon the stand, Eden B. Hunt the various payments made by the plaintiff to said relief fund and by said fund to said plaintiff during the time he was a member of said fund, and also the various contributions made to said fund by the defendant and the other considerations moving from said defendant to said fund, the same being offered in bar of the plaintiff's action and not merely for the purpose of proving the amount paid to and received by the plaintiff.

And thereupon the Court rejected said offer, and each and every part thereof, and refused to permit any of said evidence to be given to the jury in bar of the plaintiff's right to recover in this suit; to which ruling and action of the Court the defendant by its counsel then and there duly excepted and said exception was entered at the time upon the minutes of the Court.

And thereupon the defendant by its counsel specifically excepted to the action of the Court in sustaining the plaintiff's demurrer to the defendant's second plea, and also to the rejection by the Court of the aforesaid offer of evidence made in support of the allegations of said plea, and stated the following grounds of exception, to-wit:

1. Because the Act of Congress, approved April 22, 1908, and especially section 5 thereof, is not applicable to this case and to the defense set up and offered to be proved, because said statute  
122 was passed more than two years after said relief department contract was made, and section 5 refers to and attempts to strike down only contracts the purpose or intent of which is to exempt carriers from the liabilities created by said act; that said statute has no retroactive effect and cannot be made to cover contracts which were in existence long before its passage and which had no reference to the liabilities thereby created, and especially, contracts which do not tend to exempt the carrier from liability, but simply provide that the acceptance of benefits in accordance with the provisions of the contract will constitute a release.

2. If said act is applicable to this case, that the act is unconstitutional and void for the following, among other reasons:

a. That it is a statute governing liabilities of master and servant; not a statute regulating commerce, and that it does not apply generally to all masters in the District of Columbia and elsewhere, but singles out one class, to wit, common carriers by railroad.

b. That it does not apply generally to all common carriers, but simply strikes at one class of them, to wit, common carriers by railroad, thereby denying to them the equal protection of the law.

c. The act fails to distinguish between employes sustaining injury or suffering death while in the performance of their duties for the carrier, and employes not so engaged, or who may be performing work for their own personal profit or convenience, or who may be upon their own conveyances at the time of the injury.

123 d. Because it impairs the obligations of contracts, and denies to the carrier and employé freedom of contract.



e. Because it denies to common carriers a fair and impartial trial by a jury, as known to the common law.

f. Because it is a denial to the carrier of due process of law.

g. Because it will result in the taking of their property without just compensation.

And thereupon counsel for the plaintiff offered the following prayers for instruction, the first of which was rejected by the Court and the second of which was granted, being conceded by counsel:

### I.

The jury are instructed that if they find from the evidence that the injury to the plaintiff proximately resulted from the negligence of any of the employees of the defendant, or from the negligent location or construction of track number eight in its Fourteenth Street Yard or the switch controlling said track, or from the negligent failure to equip said switch with a proper target or signal, their verdict should be for the plaintiff.

Rejected.

### II.

If the jury find for the plaintiff, they should award him such an amount as will compensate him for the suffering of mind and body, the personal inconvenience, and the loss of time and earnings, 124 and for all damage naturally and proximately resulting from the injury he sustained, as shown by the evidence; and if they find that his injuries are permanent, they will also award such damages as will compensate him for such suffering and inconvenience as they find he will suffer in the future, and for such loss of earning power as they find he has sustained, as a result of said injury.

Conceded.

And thereupon the defendant prayed the Court to instruct the jury as follows:

### I.

If the jury shall find from the evidence that the accident in which the plaintiff received his injuries was caused by the failure and neglect of one of the train crew of which the plaintiff was a member to see that number 8 switch was closed, then they are instructed that this was the negligence of a fellow-servant of the plaintiff and that the defendant company cannot be held responsible therefor.

Rejected.

### II.

If the jury shall find from the evidence that the accident complained of occurred in what is known as the 12th Street Yard of the defendant company, and that when said yard was prepared for occupancy and the tracks therein were located it was deemed impracticable and dangerous by the defendant's engineers to place a switch target near the point of Number 8 switch, and that said switch was intentionally located and constructed without such target, and the 125 trainmen operating in said yard were required to make an observation of the point of said switch to see whether it was open or closed before attempting to move cars or trains over



or past it, and that the plaintiff had been employed by the defendant company for a long time prior to the accident and had worked in said yard both in the nighttime and daytime on frequent occasions during his period of service and knew of the absence of said target and of the necessity of the trainmen making such observation before using said switch and tracks, then the jury are instructed that by remaining in the service of the defendant company engaged in the operation of trains in said yard the plaintiff assumed the risk of accidents which might result from the absence of such switch target.

Rejected.

But the Court refused to grant said prayers for instructions, or either of them, to which ruling of the Court the defendant by its counsel then and there duly excepted, and said exception was entered at the time upon the minutes of the Court.

MEM.—(The Court rejected plaintiff's prayer No. 1 and defendant's prayer No. 2 on the ground that there was no evidence that would justify the submission or argument of the case to the jury on the theory that the jury might find negligence on the part of the defendant in the construction or location of track No. 8, or in the failure to equip the same with a target or signal.)

And thereupon the Court voluntarily and of its own motion instructed the jury as follows:

126      Gentlemen of the jury, the duty of the court in this case is fulfilled, I hope, by a very brief statement to you. The question now is simply a question of damages, because it is practically conceded that he is entitled to recover under this law of 1908.

If this plaintiff was injured by the negligence of any of the servants of the railroad company, in this case by negligence in failing to shut or close a switch so that the cars ran into the car on which the plaintiff was and he was injured by being thrown from the car, by reason of the fact that the car went onto the wrong track, and if all of that happened by reason of the negligence of any of the employes of the defendant company, he is entitled to recover.

The defendant has very frankly conceded to you that he believes that it did so happen. That relieves the Court from any instruction on the law at all, except as I have given it to you in the general statement I made a moment ago.

So that the real question is as to the measure of damages. You jurors have been here too long not to know that the measure of damages is in your sole charge, depending upon the evidence that has been brought before you in the case as to what that damage has been. Here it is purely a matter of compensation. It is not a question of punishing anybody in this case. The question is how much is the plaintiff entitled to for the injury he has sustained. It is now what you or I or anybody else would take to have such an injury. That is not the theory upon which you must decide cases, because one man might be perfectly willing to have his arm taken off for  
 127      \$10,000, and another man would not have it done for \$10,000,000. So that is not the question. The question is what is the amount that you think will be fair and proper to



give to the plaintiff for the injuries he has received. That is the only way you can look at it.

In line with that theory of the law, which goes upon the question of compensation and not of punishment, you will have to find the damages in this case. If a person does a thing maliciously and injures you, then you can punish him. You can give exemplary or punitive damages as they are called. But when it is not done wilfully or intentionally you give him what he is entitled to by way of compensation. This is the rule that you apply in this case. If the jury finds for the plaintiff they should award him such an amount as will compensate him for the suffering he has endured, for the personal inconvenience and loss of time and earnings, and all damages naturally and proximately resulting from the injury he has sustained, as shown by the evidence; and if you find that his injuries are permanent you will also award him such damages as will compensate him for such suffering and inconvenience as you find he will suffer in the future, and for such loss of earnings as you find he has sustained as a result of such injury.

This has been so fully explained to you by all the counsel in the case that it scarcely needs any other comment from the Court. You will give him, as compensation, such an amount of money as you think, from all the evidence in the case, he is entitled to.

I do not think there is anything else to be said to you. You will simply announce your verdict as to the amount of damages  
128 that you find for the plaintiff.

Be it remembered that each of the separate and several exceptions taken by counsel for the defendant as hereinbefore set forth was so taken by said counsel then and there before the jury retired, and each of said exceptions was then and there separately and severally entered upon the minutes of the justice presiding at the trial, and counsel for the defendant then and there prayed the Court, and now prays the Court, to sign and seal this bill of exceptions in which is accurately set forth said exceptions and the substance of all of the evidence given at the trial, and in which is inserted in extenso all of the documentary evidence offered by the defendant and rejected by the Court, and at the request of said counsel the same is accordingly signed and sealed and made a part of the record in this cause this 13th day of July, A. D. 1910.

HARRY M. CLAUBAUGH, [SEAL.]  
*Chief Justice.*

Settled by counsel July 8th, 1910.

LECKIE, FULTON & COX,  
*Attorneys for Plaintiff.*  
McKENNEY & FLANNERY,  
*Attorneys for Defendant.*

129 *Directions to Clerk for Preparation of Transcript of Record.*

Filed July 13, 1910.

\* \* \* \* \*

The Clerk in preparing the transcript of record in the above entitled cause will embody therein the following, to wit:

1. Declaration, filed March 8, 1909.
2. First plea of defendant, filed March 29, 1909; joinder of issue thereon, etc.
3. Memorandum of leave given defendant to file second plea, May 23, 1910.
4. Defendant's second plea and demurrer thereto, May 23, 1910.
5. Memorandum of order sustaining demurrer to said second plea, May 24, 1910.
6. Memorandum of trial and verdict of jury, May 25, 1910.
7. Motion for new trial, May 26, 1910.
8. Memorandum of order of Court on motion for new trial, June 3, 1910.
9. Remittitur by plaintiff, June 11, 1910.
10. Order overruling motion for new trial; judgment on verdict; notation of appeal in open court by defendant; amount of supersedeas bond, etc., June 13, 1910.
11. Notation of approval and filing of appeal bond, June 23, 1910.
12. Memorandum of submission to the Court of bill of ex-
- 130 ceptions.
13. Bill of exceptions.
14. Memorandum of order or orders extending time for settlement of bill of exceptions or filing transcript of record, if any.
15. This designation for transcript of record.

McKENNEY & FLANNERY,  
*Attorneys for Defendant.*

Service of the foregoing designation is hereby acknowledged this 8th day of July, A. D. 1910.

LECKIE, FULTON & COX,  
*Attorneys for Plaintiff.*

*Memorandum.*

August 3, 1910.—Time in which to file transcript of record in Court of Appeals extended to September 20th, 1910.

131 *Supreme Court of the District of Columbia.*

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to



130, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 51468 at Law, wherein Theodore A. Schubert is Plaintiff and Philadelphia, Baltimore & Washington Railroad Company, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of September, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia Supreme Court. No. 2222. Philadelphia, Baltimore, and Washington Railroad Company, appellant, vs. Theodore A. Schubert. Court of Appeals, District of Columbia. Filed Sep. 15, 1910. Henry W. Hodges, Clerk.

